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Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Addendum

Mission to Austria*

Summary

In the present report, the Independent Expert on the enjoyment of all human rights by older persons presents the findings of her visit to Austria from 22 to 30 January 2015. The main objective of the visit was to identify both best practices and gaps in the implementation of laws relating to the promotion and protection of the rights of older persons. She also assesses the implementation of existing international instruments, as well as laws and policies pertaining to the enjoyment of all human rights by older persons in Austria. Based on information gathered before, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons and groups of persons. She also examines measures to foster the implementation of standing law and policies that contribute to the promotion and protection of the rights of older persons.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[*English only*]

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Austria

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I. Introduction

1. Pursuant to Human Rights Council resolution 20/24, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Austria from 22 to 30 January 2015, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing law relating to the promotion and protection of the rights of older persons in that country. During her visit, she met government representatives, non-governmental organizations and others working on issues related to older persons. The Independent Expert thanks the Government of Austria for extending this invitation to her and for its cooperation throughout the visit.

II. Background and context

2. More than 18.4 per cent of the population of Austria is currently 65 years of age or above and the age structure will continue to shift significantly towards older persons in the years to come. It is estimated that the figures will rise to almost 24 per cent of a population of slightly more than 8 million people in 2030.[1]

3. The group of older persons aged between 65 and 79 will grow drastically as the baby-boomer generation grows old and as a result of the steady increase in life expectancy. There will also be significant increases in the share of the very old, i.e. those aged 80 years and more, from around 400,000 in 2011 to almost 1 million in 2050.

4. In the independent Global AgeWatch Index,[2] Austria ranks fourteenth. This was congruent with the Independent Expert's findings during her visits. She also noted a number of positive initiatives and good practices adopted in Austria to ensure the enjoyment by older persons of all human rights. In particular, she appreciated the institutionalization of the participation of older persons in decision-making through the Senior Citizen Council and commended Austria on its adoption of the federal plan regarding older persons.

III. Administrative, legal, institutional and policy framework

5. Austria is a federal republic comprised of nine independent federal provinces (Länder) that are administered by local governments headed by a provincial Governor. The Länder enjoy certain autonomy, including constitutional authority to enact certain legislation and take administrative decisions. Nevertheless, most public affairs fall under the competence of the federal authority.

6. Austria has ratified several international treaties that are of particular importance to older persons and that include direct or indirect references to the human rights of older persons. It is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Covenant on Civil and Political Rights and its Second Optional, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on

[1] See the website of the Austrian statistical office: www.statistik.at.

[2] See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Austria.

Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. It is not, however, party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

7. The Convention on the Rights of Persons with Disabilities in particular contains a number of references to age and older persons, such as article 16 (2), on age-sensitive measures to protect against exploitation, violence and abuse; article 25 (b), on the right to health; and article 28 (2) (b), on the right to an adequate standard of living.

8. As a member of the European Union, Austria is obliged to conform to the European Union *acquis communautaire* and the standards it sets. Most notably in this regard is article 25 of the Charter of Fundamental Rights of the European Union, which calls on member States to recognize and respect the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. In accordance with article 23 of the European Social Charter, Austria furthermore committed itself to adopting or encouraging appropriate measures to ensure social rights of older persons with regard to participation, independence and self-determination.

9. Austria has also ratified most of the Council of Europe treaties on human rights and culture. It is not, however, party to Protocol No. 12 of the European Convention on Human Rights, which includes a general prohibition on discrimination, and the European Convention on the Legal Status of Migrant Workers.

10. Austria, moreover, protects human rights, including the human rights of older persons, in its Constitution and in numerous individual laws. The European Convention on Human Rights does not only have the status of a treaty under international law, but is directly applicable to federal constitutional law and therefore part of the Austrian Constitution. Moreover, article 7, paragraph 1, of the Austrian Constitution provides that all nationals are equal before the law and that privileges based upon birth, sex, estate, class or religion are inadmissible. No one shall be discriminated against on the grounds of disability.

11. In 2012, further to section 11, paragraph 2, of the Federal Senior Citizens Act,[3] Austria adopted a federal plan ageing entitled "Ageing and Future: Federal Plan for Senior Citizens". This research-based long-term plan is a cornerstone of Austrian policy regarding older persons. It seeks to guarantee and to improve the quality of life of older persons and to ensure their active involvement and participation in all spheres of life. It contains specific recommendations in a large number of areas, including participation, the economic situation, employment, health, education, older women, generations, housing and mobility, care and nursing, social security, media, discrimination and violence, migrants, and infrastructure. Beyond the federal level, each of the provinces has developed policies, plans and programmes that deal specifically with older persons. Austria's national action plan on disability 2012–2020 also devotes a chapter to older persons with disabilities.

12. The responsibility for older persons in Austria extends across several ministries. The two main ministries dealing with issues of concern to older persons are the Ministry of Labour, Social Affairs and Consumer Protection, and the Ministry of Health. As far as legislation and its enforcement are concerned, the federal Government plays a central role; however, many competencies are delegated to the provinces or to the social security institutions.

[3] Federal Law Gazette No. 84/1998.

13. Since July 2012, the Austrian Ombudsman Board has been responsible for protecting and promoting compliance with human rights, and its monitoring activities therefore extend to ensuring the human rights of older people. It also acts as a national prevention mechanism and monitors human rights in all institutions and facilities where people with or without disabilities are in danger of being particularly vulnerable to abuse, inhumane treatment and measures that deprive them of liberty. These institutions include correctional institutions, police stations, psychiatric facilities and facilities for persons with disabilities, older persons' homes and long-term care facilities.

14. To strengthen the participation of older persons in relation to issues affecting them and to establish an institutionalized dialogue, the Federal Senior Citizens Advisory Council was created. It makes proposals for social, economic, health policy, housing policy and cultural measures in senior citizens' policy.

15. The Council is the official representation of older persons and has the same status as social partners, i.e. the statutory representative bodies of employees, business people and farmers, in all matters affecting the interests of older persons. It is an umbrella organization of Austrian associations for senior citizens and a mechanism for dialogue between political decision makers and the representatives of older persons to ensure that the concerns of older persons and the proposals on how to address them are brought to the attention of the Government through the Minister of Labour, Social Affairs and Consumer Protection. This body helps to ensure the political participation of older persons, as it provides for rights to co-determination in a number of important areas: the active design of future senior citizens' policy in Austria; the Commission of Experts on Pension Reform; the autonomous administration of the social insurance institutions; and the Advisory Council of the Federation of Austrian Social Insurance Institutions.

IV. Independent Expert's main findings

A. Discrimination

16. The Equal Treatment Act[4] and its latest amendment, which entered into force in August 2013, prohibit any direct and indirect discrimination in the workplace, including on the basis of age.

17. Protection against discrimination at the level of the Länder most importantly concerns public employment. With the exception of Lower Austria, all provinces extended the scope of anti-discrimination protection beyond the employment sphere to access to and supply of goods and services, housing, social security and benefits and health.

18. The Ombud for Equal Treatment is an independent State agency that consists of three individuals, one of whom deals specifically with discrimination on the grounds of age. Its mandate, however, is limited to the area of employment and occupation. Irrespective of a person's race, ethnic origin, religion, age and sexual orientation, the agency is responsible for counselling and supporting victims of discrimination in relation to employment. It can conduct independent enquiries and surveys, publish independent reports and make recommendations on discrimination-related issues. In practice, it mostly negotiates out-of-court settlements and has almost no role before the courts. It can also, however, initiate proceedings before the Equal Treatment Commission at the request of the person concerned.

[4] Federal Law Gazette No. 66/2004.

19. Despite the comprehensive legal framework, enforcement of anti-discrimination provisions in Austria remains deficient. One reason is that the legal framework is complex and fragmented, and that instead of a single mechanism there are a number of parallel systems at the federal level and at the level of the provinces, as well as for disability-related matters.[5] Resources of the federal equality bodies are also insufficient. Another reason is the lack of awareness among the population, including about the existence of specific legislation.

20. Discrimination in access to facilities and services in Austria remains a concern. Financial services, such as loans or mortgages, or insurance, are often not available to older people or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk. The Independent Expert was pleased to learn during her visit that it was planned to extend the scope of the Equal Treatment Act to include access to and supply with publicly available goods and services, including housing space.

B. Violence and abuse

21. Violence against older persons in Austria remains a taboo subject. It often happens inconspicuously and in many cases goes unnoticed although there are indications that violence occurs rather frequently in all types of settings.[6] Violence against older persons takes many different forms, including discrimination in the public sphere, linguistic discrimination, isolation, neglect and financial exploitation, psychological violence, the withholding of basic needs and physical attacks.

22. Further improvements regarding the protection of and support for victims of violence were made in 2009, with the amendment of the Protection against Violence Act. Under the Act, police can impose a two-week barring order in cases of violence, evicting the endangering person from the dwelling with immediate effect, so that the victim can stay there safely.

23. If there is a need to prolong the protective measures beyond this term, victims can apply to court for a temporary injunction under civil law against the perpetrator, which will order the perpetrator to leave the apartment and forbid the person to return to it. While the measures have been effective in cases of violence against women, they are of lesser effect in relation to violence against older persons because of the interdependence between the person in need of care and the caregiver.

24. There are no representative data concerning domestic violence against older persons for Austria, in part because criminal statistics are not disaggregated by age. Reasons for underreporting include the privacy barrier in family relationships, the lack of awareness and the fear that older persons have of reprisals by the caregivers. Moreover, collective prejudice against older people and public awareness influence the way in which abuse and violence is perceived, recognized and reported.

25. Eighty per cent of Austrian older persons are cared for at home within the family. According to a study carried out by the Ministry for Labour, Social Affairs and Consumer

[5] See, for example, Behinderteneinstellungsgesetz, BGBl Nr. 22/1970, Bundes-Behindertengleichstellungsgesetz, BGBl. Nr. 82/2005 and Bundesbehindertengesetz, BGBl Nr. 283/1990.

[6] Specific awareness-raising measures under way to establish both advisory competences within existing structures and efficient strategies of action against violence against older persons will have a medium-term effect.

Protection in 2012,[7] the persons close to older people thus constitute the greatest danger for them in relative terms. Most common forms of abuse are financial exploitation, such as the use of the pension or care allowance of the old person, followed by frequent occurrences of verbal abuse, threats and neglect.

26. Violence against older people in family settings differs from violence in institutional settings. The most common complaints in institutional settings relate to structural problems in homes for the elderly and hospitals, rather than incidents involving individual caregivers. There are also frequent complaints about incidents in public places, such as public transport, public offices and shops regarding discrimination or verbal abuse.

27. It has been estimated that one out of four older women living in private households in Austria are victims of violence and abuse, of whom 4.5 per cent are victims of frequent and multiple forms of violence.[8] In cases of emotional and sexual abuse and the violation of personal rights, the perpetrator was most frequently the partner or spouse, whereas in cases of neglect and financial abuse, it is the children or children-in-law who are most frequently involved. There are also some cases of neglect, financial abuse and the violation of rights committed by paid caregivers.[9]

28. Some of the measures that have proved effective in addressing the issue of violence against women are not suited to managing conflict constellations and violent relationships involving older women. Older women generally do not resort to the possibility of staying at a women's shelter.

C. Adequate standard of living

29. On average, older persons in Austria enjoy a relatively high living standard. According to the Global AgeWatch Index, the country ranks second in terms of providing an enabling environment for older persons.[10] In 2014, the at-risk-of-poverty rate for older persons was around 14 per cent, while the rates for those living alone were 23 per cent and for older women 16 per cent.[11]

30. Social transfers, and in particular the Austrian pension system, account for the largest part of the resources of older persons and significantly contribute to ensuring financial security of a large part of the older population. Pensions reduced the at-risk-of poverty rate to 26 per cent and other social benefits further reduced it to 14 per cent in 2012.[12] Successive pension reforms have made claims to a pension and pension levels more dependent on participation in the labour market. As career breaks, part-time work and low incomes result in lower pension benefits, it is mostly women who lack financial security in old age.

31. The housing situation and housing needs of older persons are essential aspects of active ageing and of the ability of older persons to live an autonomous life. Only about half

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[7] See www.sozialministerium.at//cms/site/attachments/3/2/0/CH2275/CMS1314805959138/praevention_und_intervention_bei_gewalt_gegen_aeltere_menschen_kompl.pdf.

[8] See www.inpea.net/images/AVOW-Austrian-Survey_2011.pdf.

[9] Ibid.

[10] See footnote 2.

[11] National report on the implementation of the Economic Commission for Europe regional implementation strategy for the Madrid International Plan of Action on Ageing 2002 (2007-2012), Austria, October 2011, available from http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li02&lang=en.

[12] Federal Ministry of Labour, Social Affairs and Consumer Protection, *Social Protection in Austria*, Vienna, April 2014.

of Austrian older persons are homeowners and thus live rent free, which is way below the Organisation for Economic Co-operation and Development (OECD) average of 76 per cent. About 98 per cent of persons aged between 65 and 80 live in private households.

32. Austria provides a rich variety of housing options for older people, including mixed and designated communities, age-adapted homes and flat-sharing concepts. Other schemes include tax incentives and subsidies to encourage developers to build accessible and appropriate housing for older people, or senior citizen apartments, which are governed by the Austrian Tenancy Act.[13] To qualify under the scheme, apartments need to cater to the needs of older persons and provide for a basic supply of social services. Family members cannot take over the tenancy inter vivos or, upon death, which makes it attractive for limited-profit housing associations to offer such apartments to older persons. Accommodation at reduced rates, which is very common among older persons in Austria, also enables many people to enjoy adequate living standards.

33. Older persons often feel the need to change their home because it is no longer adapted to their needs (e.g. too large, not barrier-free), but face considerable obstacles, particularly financial, as new rents may be significantly higher. The Independent Expert was pleased to learn during her visit that since January 2015 a new municipal housing programme is available to older persons in Vienna, to help and financially support older persons in changing to a smaller apartment.

D. Social protection and the right to social security

34. Austria has a comprehensive system of social security and welfare schemes. Social security mostly falls within the responsibility of the central government, notably social insurance, including pension insurance and universal benefits covering the entire resident population. Local governments (i.e. provinces and municipalities) are responsible for part of health care, housing and most of the social services.

35. The system operates at two levels: the insurance-based system, which includes pensions and which covers all gainfully employed persons and, to a large extent, their dependents; and public welfare benefits that are made available by the federal, provincial and municipal authorities to citizens in need, and who are not covered by the insurance system.

36. In 2004, Austria reformed its pension system. The Act on the Harmonization of Austrian Pension Systems, which entered into force in January 2005, provides a uniform pension law for all occupational groups. In addition, there are efforts to align the pensionable age for women with that of men. Starting on 1 January 2024 it will be raised by six months per year, and harmonization will be completed by 2033. The reform also introduced a bonus/malus system for deferred and earlier retirement.

37. In spite of these measures, de facto retirement age in Austria in 2013 was 59.3 years for women compared with 59 years in 2003 and 62.9 years for men compared with 62.7 years in 2003.[14] The 2014 figures show a slightly more positive trend. Early retirement is still regarded the desirable option by a large number of older workers in Austria,[15] as well as by Austrian employers. Pensions that do not reach a minimum threshold value are increased by a compensatory supplement.

[13] Federal Law Gazette No. 520/1981.

[14] See www.sozialministerium.at/cms/site/attachments/1/6/3/CH2088/CMS1313745345149/social_protection_in_austria.pdf.

[15] Wirtschaftskammer Österreich, Erwerbstätigkeit Älterer et al. 2012/13.

38. Sustainability of pensions in Austria is monitored by the Pension Commission. The Commission was established under the General Social Insurance Act and has been submitting reports every three years since 2007 on the long-term financing prospects of the statutory pension scheme until 2050. The role of the Commission is to propose sustainable reform measures if it identifies financing problems.

39. There is also a means-tested minimum income scheme, which is a subsidiary safety net of last resort within the social security system. Such benefits for instance include housing assistance.

40. Social services include a range of services, including for the benefit of older persons, such as older persons' homes and nursing homes, day-structuring and extramural services as well as housing schemes for people with special needs. Coordination between the different providers and between the provinces in the provision of these services remains an area of concern. Whereas most cash benefits and health-care services in Austria are legal entitlements, there seems to be no such entitlement to the majority of social services, most of which fall within the competencies of the Länder.[16]

41. The quantity and quality of social services varies across regions, particularly between urban and rural areas. In terms of provision of services, some social local governments run social services themselves, while other services are outsourced to non-profit organizations, associations or private providers. The public sector plays a dominant role in the area of homes for the elderly and nursing homes.

E. Education, training and lifelong learning

42. Older persons learn differently from younger ones and have specific needs and interests. Older persons learn to do, to know, to live together and to be, with informal learning playing an important role. Austria has numerous projects in the fields of lifelong learning or education after retirement in order to provide equality of access to diverse learning offers.

43. A study commissioned by the Ministry for Social Affairs and Consumer Protection in 2007[17] showed that participation of older persons in organized forms of education and learning in Austria was relatively low. It also highlighted that education and social origin are important factors determining the participation in educational offers for older persons.

44. Ensuring access to education and training in old age requires that the living environment (*Lebenswelt*) of older persons be taken into account in the planning and design of educational officers. This does not mean, however, that educational programmes should target older persons exclusively, as this would be limiting and could lead to creating spaces of social exclusion. The Independent Expert in this regard commends Austria's approach that regular studies at universities are open to older persons, which also helps foster intergenerational learning. This offer is used up to 70 per cent by older women.

45. As specific pedagogical methods are required for teaching older persons, the Independent Expert was very pleased to learn that Austria is one of the few countries offering master's degree programmes in gerontopedagogics.

46. Continuous learning is also essential in the light of the very early de facto retirement age in Austria. Any measures taken to discourage or reduce early retirement need to be

[16] The Ministry of Health is not in a position to ascertain if the services provided are legal entitlements.

[17] See www.sozialministerium.at/cms/site2/attachments/8/5/7/CH2233/CMS1218112881779/kolland_lernbeduerfnisse_zusammenfassung[1].pdf

accompanied by measures in the area of employment, including education and training, to ensure that people can meet job requirements. It is, however, important not to overfocus on employability, as this will not meet the interest of older persons beyond gainful employment and hardly reaches educationally disadvantaged groups.

47. Education also has another dimension in terms of the situation of older persons. Better-educated persons usually have better-paid jobs, contribute more to the social welfare system as a result and will also be less likely to be at risk of poverty in old age. As poverty and social exclusion in old age are also consequences of disadvantage and discrimination suffered in the early stages of a person's life, measures must be taken long before someone turns 65, as this will, to an extent, determine the resources available in old age. For a variety of reasons, the needs for care of those persons of 70 years and older who only completed their compulsory education is twice that of those who hold a university qualification.

F. Independence and autonomy

48. Approximately 55,000 persons are estimated to have a legal guardian in Austria. Half of these are under guardianship in respect of all aspects of life.[18] The number has greatly increased in recent years and will continue to rise, given the intensity of ageing in Austria.

49. The amendment to the Legal Guardianship Law, which entered into force in 2006, was an important step towards strengthening the self-determination of older persons and persons with intellectual or psychosocial disabilities. It introduced the concept of enduring power of attorney, through which people may appoint a person of trust as their future representative when they still have the necessary legal capacity, ability to reason, to judge and to express themselves. Another element strengthening self-determination is a person's right to state their preference regarding a potential future legal guardian in a written nomination of legal guardianship.

50. In September 2013, the Committee on the Rights of Persons with Disabilities noted, however, that Austrian guardianship laws appeared to be old fashioned and out of step with the provisions of article 12 of the Convention on the Rights of Persons with Disabilities. During her visit, the Independent Expert was also informed that numerous complaints had been brought to the attention of the Austrian Ombudsman Board in this connection. The Independent Expert was pleased to learn that legal capacity and the introduction of supported autonomous decision-making for persons with intellectual or psychosocial disabilities were currently under discussion in Austria.

51. While progress has been made in recent years in the area of accessibility of buildings, transportation and information, accessibility remains poor outside urban areas. A number of cities and Länder have developed plans for improving accessibility to facilities, but there is no uniform countrywide plan to provide comprehensive barrier-free accessibility. Neither are there any mandatory provisions concerning the implementation of barrier-free access and, most importantly, the elimination of existing barriers.

52. Accessibility in rural areas is more restricted than in urban areas. Distances to facilities for everyday activities are longer, and destinations and spatial structures are often too dispersed for organizing efficient and dense public transport.

[18] See CRPD/C/AUT/CO/1, para. 27.

G. Care

53. Health care in Austria is based on a social-insurance model that guarantees all inhabitants equitable access and a legal right to health services. The principle of statutory health insurance, together with the co-insurance dependents (children and non-working partners), ensures coverage of 99.9 per cent of the population. The main legislative basis is the General Social Insurance Act.

54. Competencies in the areas of health and care are fragmented, both regarding legislation and implementation. The division of financial responsibilities among the federal authorities—the Länder, municipalities and social security agencies—does not necessarily match the general division of responsibilities for tasks and expenditure, even though the 2012 reform brought some improvement in this area.

55. The main actors in the area of health at federal level are the Ministry of Health, the Ministry of Labour, Social Affairs and Consumer Protection, the social security institutions and the social partners. The Ministry of Health prepares laws, is responsible for the protection of public health, as well as overall health policy, and functions as facilitator between the different players in the health-care system, and also as decision maker and supervisory authority. For instance, while the Government is responsible for outpatient care legislation, responsibility for inpatient care (i.e. in hospitals) is shared between the federal and the provincial level: the federal Government provides the framework legislation, while legislation on implementation and enforcement falls under the responsibility of the Länder. While recent health-care reforms[19] have contributed to alleviate some of the problems, the overall fragmentation leads to conflicts of interests, lack of transparency, overlaps and governance deficits.

1. Home and family care

56. In Austria, home care is the most common form of care for older persons; with institutional and community care services being relatively scarce. In 2007, Austria adopted the Home Care Act,[20] which provides a legal framework for 24-hour care for care-needing people in private households. This was an important improvement to formalize services mostly provided on an informal basis until then, which contravened several legal provisions, including on social security, taxes, professional qualification, and immigration. The Act allows caregivers to provide services as self-employed persons or dependent employees.

57. There are a number of services to support family carers, such as counselling and respite care. However, day centres, opportunities for short-term care and day care for older persons remain insufficient. The amendment of the Labour and Social Act in 1998 was a major step towards facilitating the inclusion of family carers into the social security system. This is particularly important given the fact that more than two thirds of caregivers are women and that 70 per cent of the carers are not gainfully employed.

58. In 2007, standards were set for caring professions providing services at home: for example, protection from signing a contract on the doorstep, and establishing minimum contents of contracts.

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[19] The Law on the Quality of Health Care Services of 2005, for instance, guarantees cross-sectoral quality. Furthermore, during the last years a quality strategy for the Austrian health-care system and a patient security strategy were developed.

[20] Federal Law Gazette No. 33/2007, last amended by No. 57/2008.

59. Ensuring quality control in home care is one of the main challenges. While home visits by certified care workers are an important step in monitoring home care, further measures are required to improve the protection of older persons, including against physical and mental violence, and from degrading treatment and neglect.

2. Institutional care

60. Institutional care in Austria has historically been at a very low level compared with other Western European welfare States. In 1996–1997, only 3.8 per cent of the population were living in homes.

61. Special civil law regulations and information obligations apply to homes for the elderly.[21] The homes are thoroughly examined and legal warnings issued in cases of non-conformity with legal requirements.

62. The Nursing Home Residence Act[22] and the Hospitalization Act[23] stipulate the requirements when depriving a person of their liberty in nursing homes, homes for the elderly, facilities for people with disabilities, hospitals and psychiatric facilities. In institutions for the elderly, deprivation of liberty of persons with disabilities or people in need of care may never be justified on organizational grounds or deficiencies (e.g. lack of staff, structural defects, or inadequate infrastructure). Deprivation of liberty by electronic or mechanic means or medication can be considered only as a last resort. Nevertheless, in September 2013, the Committee on the Rights of Persons with Disabilities expressed deep concern that the law allows for persons to be confined against their will in a psychiatric institution if they have a psychosocial disability and are considered to be a danger to themselves or to others. The Committee regarded this as being in conflict with article 14 of the Convention on the Rights of Persons with Disabilities because it allows for a person to be deprived of liberty on the basis of actual or perceived disability.

63. The conditions and terms with respect to housing in homes for the elderly are laid down, inter alia, in sections 27 (b) to (i) of the Consumer Protection Act,[24] as well as in the nursing home acts of the Länder. According to section 27 (d), paragraph 3, of the Consumer Protection Act, these contracts must contain provisions regarding patients' personal rights (e.g. right to privacy, right to respect of their correspondence, right to political and religious self-determination, freedom of expression, assembly and association, right to contact with the outside world, right to equal treatment and prohibition of discrimination, right to adequate medical treatment, and right to individual clothing).

64. An important institution is the Patients' Advocates in Austria, which offers assistance and represents patients in matters of health, hospitals and nursing homes in the Länder. In particular, the advocates act as legal representatives in court proceedings for involuntary placement and also support individuals during their stay in hospitals or psychiatric departments. While in principle their tasks end by law when the individual dies in an institution, the Austrian Supreme Court of Justice in 2010[25] held that their power of representation remains in such cases, as otherwise there would be a gap in human rights protection.

[21] Federal Law Gazette No. 140/1979, last amended by No. 12/2004.
[22] Federal Law Gazette No. 11/2004, last amended by No. 18/2010.
[23] Federal Law Gazette No. 155/1990, last amended by No. 18/2010.
[24] Federal Law Gazette No. 140/1979, last amended by No. 50/2013.
[25] Decision of the Austrian Supreme Court, No. 4 Ob 210/09z, Vienna, 23 February 2010.

3. Long-term care

65. In 1993, Austria was the first country in Europe to introduce universal coverage of a tax-financed long-term care allowance as the main instrument for funding long-term care. In 2008, 422,000 persons in Austria received the long-term care allowance. It is estimated that the figures will double by 2030, not least because of an increasingly ageing society.

66. The long-term care system combines benefits in cash and in kind, whereby cash benefits, by contrast to other European countries, form the largest part of it. The core of the system is the long-term care allowance, which is a social right in Austria. The long-term care allowance is granted regardless of the reasons of the need for care or the income or assets of the person concerned. In 2013, around 5 per cent of Austria's population received long-term care benefits. The introduction of the long-term care allowance was an important step towards enabling older persons to remain at home as long as possible and to lead independent lives.

67. Home-care services are mostly provided by non-profit organizations and include nursing care, mobile therapeutic services, meals on wheels, transport service, home cleaning, laundry services and weekend help. Institutional care services, including care in residential homes, nursing homes, day-care centres and in night-care centres, are mainly provided by the provinces and municipalities, or by religious and other non-profit organizations. About 15 per cent of the care facilities are run by private legal entities.

68. Another important element of the long-term care system is article 15 (a) of the 1993 agreement between the State and the provinces for people in need of care,[26] according to which the Länder have to develop needs and development plans for an adequate and comprehensive system of institutional, semi-institutional, and home-based care services with full geographical coverage, observing minimum standards. This includes palliative care.

69. In 2009, Austria amended the Federal Long-Term Care Act. The Act provides for partial increases[27] in the long-term care benefit, the introduction of a hardship supplement as well as for granting financial aid towards short-term care that will benefit a larger number of care-giving family members.

70. On 1 January 2012, a comprehensive reform of long-term care benefits entered into force. The reform led to the takeover of the long-term care benefits of the Länder in the legislation and execution at federal level. Before the reform, the structure of long-term care benefits was fragmented, as there existed a benefit in cash from the federal State and every province had its own cash benefit. There were different legal acts and also different actors involved, which was also criticized by the Austrian Court of Auditors.

71. In the area of cash benefits, particularly the long-term care allowance, before 2012 there was considerable fragmentation of the legal framework, together with the additional provisions at the local level regarding the classification of those in need of care, which resulted in further divergences. The aim of harmonizing the standards between the Länder was not, however, reached through the 2012 reform as far as care facilities are concerned, and diverging standards in terms of quality, quantity and types of services provided remained as a result of the lack of uniform legislation across the Länder.

72. The objective of the reform was to regroup the competencies for legislation and execution of long-term care benefits in cash under the federal Government, to reduce the number of actors involved, from around 300 to 5, and to ensure the uniform implementation

[26] Federal Law Gazette No. 80/2004.

[27] As of 1 January 2016, the long-term care allowance will be increased by 2 per cent at each level.

of long-term care benefits in cash, to reduce costs related to that and to shorten the duration of the proceedings of allocation of long-term care benefits in cash.

73. In spite of the long-term care allowance, there are no comprehensive safeguards against the financial risks in the event of care. There are no legal provisions regarding the percentage of the resulting additional expense that should be covered by the allowance, and, in fact, the real expenses are not even ascertained.

74. The beneficiary who receives long-term care benefit in cash can arrange their care and nursing for themselves, or chose to reside in a residential home. In this case, most of the long-term care allowances and pension, if any, are used to bear the costs of residential care and are directly paid to the provincial, municipal or social-assistance authority concerned. The Länder have various recourse mechanisms against the person in need of care, which differ according to the province. If the person in need of care used all of their capital, the social welfare agency will bear the cost of residential care. In July 2014, Styria was the last of Austria's provinces to abolish recourse against children for the costs of care for their parent.

75. In May 2011, the Government decided to establish a long-term care fund to support the provinces and the municipalities in covering care-related expenditure. A uniform definition of care-giving and nursing services in the long-term-care system was also enshrined in the law, and a countrywide database on care services was created.

4. Palliative care

76. Austria started developing its palliative care capability in the mid-1990s, with the opening of several hospices and the recognition of isolated initiatives by the medical community and governmental authorities. In 2001, Parliament decided to initiate the structured development of hospice and palliative care. There is no right to palliative care in Austria.[28]

77. Austria provides a variety of palliative care services, including palliative care units and mobile palliative care teams, as well as hospices for long-term care. While palliative care is not recognized as a medical speciality in Austria, the Independent Expert was pleased to learn that, further to her visit, a new regulation on the education of doctors was adopted, which makes palliative care and subject-specific palliative medicine a compulsory and integral part of the general and special medical training.[29]

78. The practice of inappropriate medication and drug prescription is a major risk factor for geriatric patients and is associated with adverse outcomes such as hospitalization and death. A study conducted in 2012 indicated that more than half of persons aged 70 and above were prescribed at least one potentially inappropriate medication.[30]

5. Geriatric services

79. In 2000, the Austrian Federal Institute for Health Care developed a plan for a network of geriatric acute care and remobilization units, which was adopted by the

[28] Legal health insurance provides for medical treatment if an irregular physical or mental state requires such treatment. In this regard, it is irrelevant whether the medical service is provided at home or in a care institution. The term "medical treatment" also includes treatment solely for pain relief, as well as for the prevention of deterioration of the state of health.

[29] See Ärztinnen-/Ärzte-Ausbildungsordnung 2015.

[30] E. Mann et al., "Potentially inappropriate medication in older persons in Austria: a nationwide prevalence study in 2012", in *European Geriatric Medicine*, vol. 5, issue 6, December 2014, pp. 399-405.

Government and the Länder. The Structural Plan for Health defines the framework conditions, necessary capacities and official quality standards for geriatric acute care and remobilization units in hospitals. It was agreed that by 2030 each larger general hospital in Austria should provide a department for geriatric medicine. In 2012, around 1,300 doctors with evidence of knowledge and experience in geriatric medicine were registered as geriatricians.

80. With the adoption in July 2015 of the new regulation on the education of doctors, following the Independent Expert's visit, geriatric medicine or subject-specific geriatric medicine has become a mandatory subject in the curriculum for the education of both general practitioners and specialists.[31]

6. Quality of care and availability of services

81. There is no comprehensive quality assurance or control of care in Austria, although some provisions are contained in the law on hospitals and convalescent homes..[32]

82. Since 2001, home visits have been conducted by professional care personnel for the purpose of quality assurance of home care. The objective of the visits is to provide information and advice to caregivers and persons in need of care regarding the purpose of long-term care benefits. It is also to check whether the care provided is adapted to the needs of the person concerned. The situation of home care is evaluated on the basis of a standardized report. Between 2001 and 2014, more than 158,000 home visits were made by professional nursing staff. Home visits also provide more general information about the care situation in Austria and are an important source of data.

83. Homes for older persons and nursing homes that go beyond meeting legal requirements and take targeted measures to improve the quality of life of the residents may be awarded the National Quality Certificate for Homes for the Elderly and Nursing Homes. The certificates were developed by the Government and the Länder, in cooperation with experts, and are awarded on the basis of a uniform sector-specific assessment procedure performed by objective third parties.

84. In 2009, certificates were granted to 14 homes for the elderly and nursing homes. In 2010, the certification procedure was revised and its scope widened to include geriatric centres following the pilot phase. Standards for hospice and palliative care were also incorporated.

85. Quality assurance in inpatient, semi-institutional and outpatient care, as well as home care, remains insufficient.[33] There is also no monitoring of the utilization of the long-term care allowance. Only in cases of neglect of a patient are cash benefits to be replaced by benefits in kind.

86. The benefits in kind very considerably from one province to another. They relate to the availability of services, such as places in homes for the elderly, the services themselves, including room size or staffing levels, and the costs and prices. Differences exist even within the provinces themselves, as there is no guarantee that the same services are available everywhere at the same cost and the same quality. As a result of the piecemeal

[31] Particular emphasis has been placed on "subject-specific geriatric treatment" in the special subject of "internal medicine".

[32] See H. Janig et al., "Versorgung optimieren, vermeidbare Krankenhaustransporte reduzieren. Eine Interventionsstudie in Kärntner Pflegeheimen", in G. Pinter et al., *Geriatrische Notfallversorgung*, Vienna, 2013.

[33] According to the Government, there are broad, partly extensive provisions on quality for hospitals and practitioners (who also conduct home visits).

structure of service providers, there are coordination problems that lead to inefficient resource utilization.

7. Care workers

87. Care work is often characterized by an increasing workload, long working hours and emotional exhaustion, and care workers tend to be undervalued, underpaid and undertrained. Yet there is evidence that the wellbeing of care workers correlates with the satisfaction of persons in need of care.

88. In the years to come, Austria will face serious challenges in terms of the availability of qualified nursing staff. There are currently around 100,000 care workers in Austria, many of whom will retire in the next 10 to 15 years. In addition, it is estimated that in the light of the intensity of ageing, another 30,000 care workers will be needed by the year 2030. The care sector is also losing staff owing to the lack of opportunities for workers to progress to higher levels. The average time a care worker carries out their profession is seven years. There is also an increasing need for academically trained care personnel that are sufficiently specialized to fulfil complex tasks.

89. The Independent Expert was concerned that the lack of qualified care workers has led to disturbing practices in some institutional care facilities, in violation of the human rights of residents, including older persons. These practices include beginning the night rest at 4.30 p.m. and waking up patients as early as 3.30 a.m. for them to be washed, or residents not being able to go outdoors because no staff were available to accompany them. Overmedication of persons suffering from dementia has also been reported.

8. Older migrants and care

90. The number of older migrants in need of care is expected to increase substantially in the coming years, given the current age profile of this segment of the Austrian population. In many instances, older migrants' needs of social and health-care services are not only determined by age, but also by their migration biography, such as low-paid work and hazardous working environments.

91. They are often disadvantaged in terms of old-age pension as a result of their lower incomes during their working life; in terms of housing, as they are more likely to live in low-standard accommodation and have limited access to housing benefits.

92. The predominance of family care in Austria is also problematic with respect to older migrants many of whom have no family and thus have only fragile support networks. Besides exclusion in legal terms, the main barriers to the use of social services by older migrants are the non-availability of specific services in their mother tongue and a lack of information.

V. Conclusions and recommendations

93. **Austria has a long tradition of policies and a strong legal framework aimed at promoting and protecting the rights of older persons and has consistently demonstrated its commitment in this regard at the international level. This commitment was reiterated in meetings at the highest level during the mission. The Independent Expert notes that Austria seems to be well prepared to respond to the challenges of its demographic revolution.**

94. **The Independent Expert commends Austria on adopting the Federal Plan for Senior Citizens and encourages it to continue mainstreaming the rights of older persons in all policies and programmes, which should actively combat ageism, and the**

marginalization and social exclusion of older persons and reduce their vulnerability, including to abuse and violence.

95. The Independent Expert further commends the Government on the number of studies that are regularly commissioned by the authorities to assess the situation and needs of older people in the country and to inform policymaking. She welcomes the broad array of topics covered, such as the social situation of older persons, the prevalence of abuse and violence against older women and the specific needs of older migrants. She also welcomes the fact that many of the studies are carried out in collaboration with academia and research centres. She regards this as a good example of how research can feed into targeted and successful policy-planning, design and implementation.

96. The Independent Expert encourages the Government to continue its efforts to ensure that social protection systems, health care, housing policies and anti-discrimination legislation take the specific needs of older persons fully into consideration.

97. The Independent Expert recommends that Austria ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as all conventions of the International Labour Organization, including the Nursing Personnel Convention, 1977 (No. 149), the Vocational Rehabilitation and Employment Convention, 1983 (No. 159) and the Domestic Workers Convention, 2011 (No. 189). As Austria is a member of the Council of Europe, the Independent Expert encourages the Government to ratify Protocol No. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination.

98. On the basis of these conclusions and the observations in the present report, the Independent Expert makes the recommendations set out below.

A. Discrimination

99. The Independent Expert recognizes the progress made in developing anti-discrimination laws at the federal and regional levels, but notes that the legal and institutional framework against discrimination is complex and fragmented and that the enforcement of anti-discrimination provisions remains deficient. She encourages the Government to review the institutions engaged in the implementation of anti-discrimination and equality legislation with a view to further harmonizing and streamlining the structures of the equality bodies.

100. Noting that the office of the Ombud for Equal Treatment irrespective of race, ethnic origin, religion, age and sexual orientation in relation to employment is understaffed, she urges the Government to provide adequate resources to the equality bodies to ensure that they can make full use of their powers, such as by conducting independent enquiries and surveys and publishing independent reports.

101. The Independent Expert notes that monitoring of age- related discrimination is limited to employment issues and that discrimination in other areas, such as in access to facilities and services in Austria, remains of concern. Financial services, such as loans or mortgages, or commercial insurance, are often not available to older people or are prohibitively expensive because of the inappropriate use of age as a criterion, including for determining risk. The Independent Expert stresses that the same level of protection should be accorded across the different grounds of discrimination as a matter of priority and welcomes the plans to extend the scope of the Equal Treatment Act to include access to and supply of publicly available goods and services, including housing space.

102. She further encourages the Government to review the remedies available to ensure that they trigger a change in the behaviour of people who discriminate against older persons, such as injunctive powers, and to ensure that they can deal effectively with cases of multiple discrimination.

103. The Independent Expert notes the lack of awareness among the population, including about the existence of specific legislation and that relevant domestic law. Legislation has to be made easy for the public to understand, and a nationwide awareness-raising campaign should be organized to educate older persons, in particular marginalized older persons, about their rights and the remedies available to enable them to pursue legal action and exercise their rights.

104. In view of the difficulties faced by older persons in accessing financial and commercial insurance services and resources, the Independent Expert wishes to remind businesses of their obligations to adhere to international standards preventing, inter alia, all forms of discrimination and to the Guiding Principles on Business and Human Rights, which provide guidance on responsible contracting and State-investor contract negotiations. The Independent Expert also wishes to remind the Government of its primary obligation to respect, protect and fulfil human rights in the context of corporate activities undertaken by State-owned or private enterprises,[34] and the need to adopt appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations.

B. Violence and abuse

105. The Independent Expert notes that no data are available on the prevalence of violence against older persons and reminds the Government of the need to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence and abuse against older persons as well as other impediments to the enjoyment of all human rights by older persons, such as, for example, all forms of discrimination on the basis of age alone. The Independent Expert recognizes that data have to be used sensibly to avoid stigmatization and potential misuse, and that particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and the right to privacy.

106. The Independent Expert stresses the need to systematically include older persons in surveys and official statistics, including the very old and those living in institutions such as nursing homes, to allow, among other things, a better disaggregation by age and to better reflect the enormous heterogeneity of older persons.

107. The Independent Expert notes that collective prejudice against older people and public awareness influence the way in which abuse and violence is perceived, recognized and reported. She recognizes the efforts being made by Austria to raise awareness in society of the issue of violence against older people, such as the publications that the Federal Ministry for Labour, Social Affairs and Consumer Protection produced on the issue of recognition of violence, on dementia and violence, or on the provision of consulting services regarding abuse of older persons.

[34] See the report of the Committee on Economic, Social and Cultural Rights for the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, sect. A).

108. The estimated prevalence rate and the fact of underreporting indicate that further awareness-raising is necessary to increase the prevention, disclosure and detection of abuse and violence against older people. Information about remedies, referral pathways and available services should be made widely available. This would include not only within the target group itself, but also in the broader public domain, and particularly the social environment of older persons, such as family, friends and caregivers as well as target employees in homes and institutions, doctors, nurses and carers and the general public. Dissemination of information to older persons about their rights could help to further improve disclosure about abusive experiences. Caregivers and law enforcement personnel should receive targeted training to recognize and handle cases of abuse and violence against older persons.

109. The Independent Expert notes that intervention strategies such as the Protection against Violence Act, which is very effective in the case of violence against women, has little effect in relation to violence against older people and that new legal solutions should be considered to address this phenomenon.

110. Given the multidimensionality of abuse of and violence against older persons, there is a need for a comprehensive, integrated and inclusive approach, involving different disciplines, organizations and actors, as well as older persons themselves, in identifying appropriate responses to abuse and violence.

C. Adequate standard of living

111. The Independent Expert encourages the Government to take further measures to reduce poverty among older persons, including older women and older migrants.

112. The Independent Expert stresses that the promotion of lifelong learning is essential for older persons if they are to be able to deal with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age.

113. The Independent Expert appreciates the variety of housing options available for older persons in Austria, including mixed and designated communities, age-adapted homes and flat-sharing concepts. She also welcomes the tax incentives and subsidies to encourage developers to build accessible and appropriate housing for older people. She stresses, however, the need to further promote alternative forms of housing to ensure that older persons can remain in their homes and fully enjoy their right to adequate housing, and the need to increase the residential mobility of older persons.

114. Engineers' and architects' awareness of the implications of their profession on the enjoyment of all human rights by older persons is essential. The Independent Expert recommends fostering the application of a human rights-based approach to secure the human rights conform involvement of architect and engineers in the design of public and private buildings.

D. Social protection, and education, training and lifelong learning

115. Continued learning is also essential in the light of Austria's very early de facto retirement age. Measures to discourage or reduce early retirement need to be accompanied by measures in the area of employment, including education and training, to ensure that people are able to meet job requirements. To encourage older persons to remain longer in the labour market also requires working places to be

adapted to the needs of older workers. The Independent Experts notes the incentives created, such as through the Employment Initiative up to 2017, to encourage businesses to prolong the active employment of older persons, but stresses that further measures are needed to reduce the gap between the actual retirement age and the statutory pensionable age in Austria.

E. Independence and autonomy

116. While the amendment of the Legal Guardianship Law in 2006 was an improvement of the previous system of legal incapacitation, the Independent Expert stresses that the main emphasis should be on ensuring that older persons can lead a self-determined and autonomous life as long as possible. She encourages the Government to pursue its efforts to introduce supported autonomous decision-making for persons with intellectual or psychosocial disabilities, including older persons. Supported decision-making is essential for the respect of the autonomy of older persons and their individual rights, in their own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose their place of residence. The Independent Expert welcomes the launch of the model pilot project on supported decision-making, under the National Disability Action Plan.

117. Given that physical ability, individual characteristics and the transport environment crucially influence the mobility of older persons, the Independent Expert encourages the authorities to take further measures to improve the mobility of older persons in rural areas, such as through providing better access to public transport.

118. There is no uniform, countrywide concept for providing comprehensive barrier-free accessibility. Public and private suppliers do not show sufficient consideration for the demographic developments and inevitability of mobility becoming limited in old age. There is a lack of uniform and obligatory provisions demanding the implementation of barrier-free access and, equally important, the elimination of existing barriers.

F. Care

119. The Independent Expert welcomes the human-rights based approach to long-term care, and the introduction of the long-term care allowance as a social right in Austria and encourages the Government to extend this approach to other sectors of care.

120. The Independent Expert recognizes the advantages of a federal structure, notably to ensure that policies, measures and services targeting older persons reflect the needs and the situation of the local population. She notes, however, that in some areas, such as health and care, this has led to fragmentation of the legal framework and to diverging standards both in terms of the services provided and their quality. The Independent Expert recommends that the Government review the current regulation of the care sector to ensure that the system is able to meet the challenges associated with demographic change.

121. The Independent Expert recommends that Austria enshrine the right to extensive information on public support services and different means of nursing and care in its legislative framework, as well as the right to choose among different adequate housing and care options.

122. The fact that health is subject to federal regulation, whereas social care falls within the competencies of the Länder, makes coordination of these two areas difficult and constitutes a barrier to integrating health and social care.

123. The Independent Expert calls upon the Government to review the Nursing Home Residence Act and the Hospitalization Act to ensure that no older person be deprived of their liberty against their will on the basis of actual or perceived disability.

124. Measures need to be taken to eliminate the differences in the accessibility of long-term care benefits, both in cash and in kind, and to equalize access of older persons. The differences among and within regions should also be eliminated. The Independent Expert reiterates that human rights obligations pertain to all levels of government, and calls on the Government to ensure that all people in Austria, including older persons, are able to enjoy their rights on an equal basis.

125. The Independent Expert emphasizes that, in view of their particular vulnerability, specific attention has to be paid to older persons in need of care, both in institutions and at home, and adequate numbers of skilled staff, appropriate training, quality assurance and monitoring ensured.

126. The Independent Expert urges the Government to enshrine the right to palliative care in the legal framework to ensure that older persons can enjoy the last years of life in dignity and without unnecessary suffering. She also stresses the need to better integrate geriatric and palliative care.

127. The Independent Expert notes with concern the high prevalence of potentially inappropriate medication, which is associated with adverse outcomes such as hospitalization and death. A countrywide strategy on potentially inappropriate medication is required to guarantee the right to health of older persons in Austria.

128. Older persons have different patterns of disease presentation than younger adults, they respond to treatments and therapies in different ways, and they frequently have complex social needs that are related to their chronic medical conditions. While the Independent Expert recognizes that Austria is one of the few countries where geriatric medicine is integrated in university curricula, there is a need to further promote this discipline to ensure that enough qualified geriatrics are available to meet the needs of an ageing society.

129. The Independent Experts stresses that quality care also depends on the working conditions of the care workers, as their well-being correlates with the satisfaction of the persons in need. In order to ensure that care workers provide care that meets the emotional and physical needs of older persons with compassion and dignity and to retain and attract people into the care sector, better training opportunities, including academic qualifications, should be provided, which will also help portray care work as a profession with good career prospects.

130. The Independent Expert appreciates the efforts being made by Austria to study the specific needs and preferences of older migrants in order to enable them to make use of services that are acceptable to them. She notes, however, that concrete policies targeting the older migrant population are needed as a matter of priority. Further measures are required including to improve the legal position of older migrants so as to ensure equal access to social care and services and to ensure adequate and accessible information about the services available. There is also a need to further develop social and support networks for older migrants within their communities, including migrant organizations and self-help groups.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Addendum

Mission to Mauritius*

Summary

In the present report, the Independent Expert on the enjoyment of all human rights by older persons presents the findings of her visit to Mauritius from 28 April to 8 May 2015. The main objective of the visit was to identify both best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons. In this report, she assesses the implementation of existing international instruments and of laws and policies pertaining to the enjoyment of all human rights by older persons in Mauritius. Based on information gathered prior to, during and after the visit, the Independent Expert analyses the challenges faced in the realization of all human rights by older persons, paying particular attention to ostracized persons, groups and peoples. She also examines measures to foster the implementation of standing laws and policies that contribute to the promotion and protection of the rights of older persons.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

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Annex

[*English only*]

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Mauritius

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I. Introduction

1. Pursuant to Human Rights Council resolution 20/24, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Mauritius from 28 April to 8 May 2015, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert had the chance to meet representatives of the Government and non-governmental organizations, as well as other relevant stakeholders. The Independent Expert thanks the Government of Mauritius for extending an invitation to her and for its cooperation throughout the visit. She also expresses her appreciation to the Office of the United Nations Resident Coordinator in Mauritius for its support in the preparation and execution of the visit.

II. Background and context

3. Mauritius has a population of about 1.3 million. Of that total, about 157,000 persons (13 per cent), are 60 years old or older. Some 27,000 (17 per cent) of those older persons have disabilities and 2,100 live in care and other institutions.[1]

4. It is estimated that about 30 per cent of the total population will be above 60 years old by the year 2050. In absolute terms the number is projected to almost triple, to reach about 369,000.[2] The population of Mauritius is thus, at present, experiencing an ageing process that will soon reach the level of developed countries. This change in the age structure of the population will affect all spheres of Mauritian life and calls for policy measures to address a number of issues in sectors like health, housing, family and residential care, social welfare and employment.

5. Figures for the island of Rodrigues are lower than the national average. There are currently around 4,000 older persons in Rodrigues, who represent nearly 10 per cent of the island's population. By 2050, that figure will have more than doubled and increased from 10 to 15 per cent.[3]

6. Mauritius is a multilingual, multicultural and multi-ethnic society. According to the Constitution, the population of Mauritius shall be regarded as having four official communities: a Hindu and a Muslim community (referred to jointly as Indo-Mauritian), a small Sino-Mauritian community and the "general population". The latter consists of those persons who do not appear to belong to any of the other communities and includes the Franco-Mauritians, other European immigrants and the ethnically diverse Creoles. In April 2003 the Committee on the Elimination of Racial Discrimination expressed concern that the latter category combined groups that did not share the same identity and that the constitutional classification established in 1968 might no longer reflect the identities of the various groups in Mauritius.

7. The Constitution does not specify the official language of Mauritius. Article 49 of the Constitution only provides that: "The official language of the Assembly shall be English

[1] See, for example, Mauritius, Ministry of Finance and Economic Development, Statistics Mauritius, *2011 Housing and Population Census — Analysis Report, Volume III: Population Ageing and the Old Persons in Mauritius* (June 2014).

[2] Ibid.

[3] See www.dismoi.org/tribune/journee-internationale-des-personnes-agees-rodrigues/.

but any member may address the chair in French." English is used for administrative purposes and French in business, while Creole is the native language of over 90 per cent of the population. Other languages spoken include Hindi, Telegu, Marathi, Urdu, Mandarin and Arabic.

8. Mauritius is a welfare State and spends about 50 per cent of its budget on social services, including free health and education, which also benefit older persons. Pockets of poverty exist, however, in certain regions, notably the island of Rodrigues, which has a population of roughly 40,000 people, mostly Creole, some 40 per cent of whom live below the poverty level and many of whom do not have access to a water supply and hygienic living conditions.

9. Mauritius is the first country in Africa to have developed a national policy on ageing[4] and very early on initiated a planning exercise with a view to identifying and managing the concerns of older persons and addressing the implications of the demographic changes predicted. On the Global AgeWatch Index 2014, Mauritius was by far the top African country and was ranked thirty-eighth overall.[5]

III. Administrative, legal, institutional and policy framework

10. Mauritius is a parliamentary democracy that gained independence from the United Kingdom of Great Britain and Northern Ireland in 1968 after having been colonized successively by the United Kingdom and France. It comprises several islands, including the island of Rodrigues, which has had a decentralized form of government since 2002.

11. It has a three-tier government system, comprising the central government and municipal councils (urban) and district councils (rural), which are governed by elected counsellors, as well as village councils. There is no constitutional provision for local government except the Rodrigues Regional Assembly. Local government in Mauritius is governed by the Local Government Act 2011, while local administration in Rodrigues is governed by the Rodrigues Regional Assembly Act 2001. Overall responsibility for the administration of Rodrigues falls within the remit of the Office of the Prime Minister.

12. Mauritius has ratified several international treaties that are of relevance to older persons. It is party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto.

13. The country has also ratified the Convention on the Rights of Persons with Disabilities but made important reservations to core articles, i.e. to article 9, on accessibility, to article 11, on situations of risk and humanitarian emergencies, and to article 24, on education, which the Independent Expert urges the Government to withdraw as they impede the full application of rights under the Convention. The Independent Expert welcomed the intention expressed by the Government during the 2013 universal periodic

[4] Mauritius, Ministry of Social Security, National Solidarity and Senior Citizen Welfare and Reform Institutions, *National Policy on the Elderly: Ageing with Dignity* (April 2001), available from www.ifa-fiv.org/wp-content/uploads/2012/11/060_21-Mauritius-2001-Ageing-With-Dignity-National-Policy-on-th.pdf.

[5] See www.helpage.org/global-agewatch/population-ageing-data/global-rankings-table/.

review of Mauritius to withdraw some of the reservations and regretted that no further steps had been taken in that regard (see A/HRC/25/8, paras. 17 and 18).

14. Mauritius has not ratified the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide or the Convention relating to the Status of Refugees and its 1967 Protocol (see A/HRC/WG.6/17/MUS/3).

15. The domestication of human rights treaties is one of the priority actions identified in the National Human Rights Action Plan adopted in 2012. It is essential that Mauritius incorporate the human rights treaties to which it is party into its national legislation, so that individuals can directly invoke them before national courts. Several human rights treaty bodies, such as the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Elimination of Racial Discrimination, have expressed concern in that regard and recommended domestication of the respective conventions into national legislation (see E/C.12/MUS/CO/4, CAT/C/MUS/CO/3 and CERD/C/MUS/CO/15-19).

16. Mauritius is a member of the African Union and has ratified the African Charter on Human and Peoples' Rights as well as the African Charter on the Rights and Welfare of the Child, but not the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Ratification of the Kampala Convention would further enhance existing policy and institutional mechanisms.

17. The 1968 Constitution of Mauritius is the supreme law. Chapter 2 provides for the protection of the fundamental rights and freedoms of the individual, applying equally to citizens irrespective of age.

18. Mauritius was the first country in Africa to have adopted a national policy on the elderly, in 2001. Following the adoption of the Madrid International Plan of Action on Ageing, 2002, Mauritius revised its national policy in 2008, shifting its focus from the welfare dimension of ageing to a developmental approach and the active ageing concept. Consultations on a new national policy on ageing (2014–2024) were completed in May 2014 and it is hoped that adequate measures will be taken to publicize and implement the new policy. Rodrigues subscribes to the national policy and, in addition, has a number of programmes tailored to the needs of older persons and persons with disabilities.

19. To oversee the effective implementation of the national policy, a committee of officials was established under the aegis of the Ministry of Social Security, National Solidarity and Senior Citizen Welfare and Reform Institutions.

20. In 2012, Mauritius adopted the National Human Rights Action Plan 2012–2020,[6] aimed at strengthening the national human rights framework in order to protect and safeguard civil and political rights, and to secure a greater realization of economic, social and cultural rights. The Action Plan contains a section dedicated to older persons. The protection of older persons and vulnerable populations is also enshrined in the 2015–2019 Government Programme. The Human Rights Monitoring Committee, chaired by the Senior

[6] Available from http://humanrights.govmu.org/English/Documents/HR%20Action%20Plan%202012-2020%20small.pdf.

Chief Executive of the Office of the Prime Minister, has been established to ensure implementation of the recommendations in the Action Plan.

21. In April 2011, the Government issued a Green Paper entitled "Towards a national policy for a sustainable Mauritius", one of the core themes of which was poverty, social cohesion, gender, the elderly and disabled, seeking to increase the involvement of older persons towards achieving sustainable development in Mauritius.[7]

22. The responsibility for older persons cuts across several ministries in Mauritius. The Ministry of Social Security, National Solidarity and Reform Institutions is the main government ministry in charge of the social welfare matters of older persons in Mauritius. It provides a diverse range of social services and assistance to older persons, such as the non-contributory pension, social aid and assistance and the income support scheme. It is also entrusted to empower and integrate older persons and to enhance their quality of life.

23. The Ministry of Social Security, National Solidarity and Reform Institutions is in charge of the Elder Care Department, which is mainly responsible for medical, paramedical and medicosocial services, and health education. The Independent Expert was pleased to learn that the Minister announced the setting up of a new elderly welfare department at the Ministry and an Ombudsperson for the elderly.

24. In July 2003, the Family Welfare and Protection Unit was established within the Ministry of Gender Equality, Child Development and Family Welfare to implement policies and strategies to promote family welfare and to adopt relevant strategies and implement measures to address the problem of gender-based violence. The Unit also operates the Inter-Generation Relationship Programme, which aims at consolidating ties within the family and promotes family values among the three generations, i.e. the young, parents and grandparents.

25. The National Human Rights Commission was established in April 2001 to deal with complaints for breaches of human rights listed in the Constitution and complaints against the police. It has quasi-jurisdictional powers as it can carry out investigations, summon witnesses, call for documents and hold hearings pertaining to alleged breaches of human rights. Its mandate is, however, limited in scope as it does not deal with complaints relating to economic, social and cultural rights, such as the right to work, the right to an adequate standard of living, the right to health services or the right to social security, which are of particular relevance for the well-being of older persons.

26. Complaints concerning the enjoyment of economic, social and cultural rights fall within the jurisdiction of the Ombudsman. The creation of the Ombudsman institution dates back to 1968, the year in which Mauritius became independent and adopted a new Constitution. The role of the Ombudsman is to investigate complaints against government institutions and seek redress to injustice if any, sustained in consequence of any alleged maladministration that may have been committed by any public officer or authority in the exercise of administrative functions.

27. The Senior Citizens Council, established in 1985, seeks to improve the well-being of older persons and to promote activities and projects for their welfare with regard to their rights to dignity and independence. Its members are voluntary organizations catering for senior citizens which are registered with the Registrar of Associations.

28. In 2013, the Observatory on Ageing was established under the aegis of the Ministry of Social Security, National Solidarity and Reform Institutions to conduct surveys and research on the socioeconomic aspects of ageing and to collect relevant data about older

[7] Available from www.uom.ac.mu/sites/mid/files/resources/20042011_1.pdf.

persons to facilitate policy formulation and decision-making processes in the sector as well as advocacy of the needs and rights of older persons. Since its establishment, the Observatory has carried out four studies, namely on housing and living conditions, on health problems, on leisure and recreational needs, and on elderly abuse.

IV. Independent Expert's main findings

A. Discrimination

29. Article 16 of the Constitution of Mauritius provides that no law shall make any provision that is discriminatory either of itself or in its effects. While it does not refer to discrimination on the ground of age or older age, specific enactments, such as the Equal Opportunities Act of 2012, explicitly prohibit discrimination based on age in various spheres of activity, namely employment, education, the provision of goods, services or facilities, accommodation, access to premises and sports, disposal of immovable property, and societies, registered associations and clubs. Among other protected grounds of discrimination under the law include are caste, ethnic origin and impairment, including physical and mental disabilities.

30. The Equal Opportunities Act established the Equal Opportunities Commission and the Equal Opportunities Tribunal, which consider complaints of infringement of rights protected under the Act. In 2012, a branch of the Commission was set up on the island of Rodrigues.

31. The mandate of the Equal Opportunities Commission is to attempt conciliation only. Cases in which conciliation cannot be reached may be referred to the Equal Opportunities Tribunal. In 2014, the Commission referred two cases to the Tribunal.[8]

32. The Equal Opportunities Commission was set up in 2012 and is an independent and autonomous institution. Reasons for its creation included concerns about certain gaps and insufficiencies in anti-discriminatory provisions in the Constitution, especially concerning discrimination cases in the private sphere or indirect cases of discrimination. There was also a need to broaden the scope of implementation of anti-discrimination laws.

33. The Independent Expert pointed out that the situation of older persons could not be seen in isolation, but that it was reflective of existing patterns of discrimination, marginalization and social exclusion that needed to be addressed. Certain communities and ethnic groups, such as the Creoles for instance, remained significantly disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the implementation of a range of measures benefiting the most disadvantaged segments of the population. Without a change in attitudes, the pattern of violations risks being perpetuated and sometimes exacerbated in old age. There were also concerns relating to discrimination between Mauritians and Rodriguans.[9]

34. Creole is the common language spoken by all groups in Mauritius, notably the older generation, but it does not have any official status and cannot be used in the administration. Language can in particular be a vehicle for social exclusion and impede older persons from accessing and enjoying their rights. It is essential, therefore, to ensure that proper status is given to the languages spoken by older persons so that language becomes the thirteenth protected ground under the Equal Opportunities Act. It is also essential to eliminate

[8] See Equal Opportunities Commission, *Report 2014*.
[9] Ibid.

language barriers to equality and to the enjoyment of civil and political rights as well as economic, social and cultural rights.

35. Other concerns that were also raised by the Committee on the Elimination of Racial Discrimination in 2013 are the persistence of hierarchical structures in society, particularly relating to the caste system, which are a source of exclusion. Although law does not recognize the caste system, it is deeply rooted in Mauritian tradition.

B. Violence and abuse

36. Violence and abuse against older persons was a taboo subject until the promulgation of the Protection of Elderly Persons Act 2005 in September 2006. The adoption of the Act also sparked data collection on elder abuse, but there is still no comprehensive study on the prevalence of violence against older persons in the various settings, i.e. in the domestic and the institutional context. The number of reported cases of violence against older persons in the domestic sphere per year ranges between 700 and 800. Older women are more often victims of violence and abuse and emotional abuse is the most common form.[10]

37. Besides the adoption of the Protection of Elderly Persons Act 2005, the Government has taken a number of legislative measures and has established an institutional framework in recent years, but those remain limited in scope and do not adequately address the issue of violence and abuse against older persons in Mauritius, which continues to remain a matter of serious concern. Neither the National Policy on Ageing 2008 nor the Residential Care Homes Act 2003 address the issue, respectively in the community or in residential care homes.

38. Older persons are protected from domestic violence under the Protection from Domestic Violence Act, which was fully proclaimed in 1998. The Residential Care Homes Act 2003 is designed to protect elderly abuse in private residential care homes.

39. The Protection of Elderly Persons Act 2005, which became effective on 1 September 2006, was enacted to ensure that adequate protection is provided to older persons against abuse, be it physical or verbal ill-treatment, mental or emotional harassment, financial loss or material prejudice. The Act makes an offence of any act of abuse on an older person or willfully failing to provide an older person under care with adequate food, medical attention, shelter or clothing. The Court may grant a protection order if there is reason to believe that an older person has suffered, is suffering or is likely to suffer an act of abuse. The protection order seeks to restrain the person committing the act of abuse from engaging into any such conduct towards the older person.

40. The Protection of Elderly Persons Act 2005 also provides for an institutional framework, including the Protection of the Elderly Network, which seeks to ensure, promote and sustain the physical, psychological, emotional, social and economic protection and well-being of older persons. The Elderly Person's Protection Unit has moreover been established to deal with reported cases of abuse of older persons. The Unit can apply to the Court for a protection order where it deems it necessary in circumstances where there is a real danger or threat to the life of an older person. It also arranges for the admission of an older person to a residential care home, where required. The Unit further organizes public awareness-raising campaigns on the rights of older persons.

41. The Elderly Person's Protection Unit is supplemented by Elderly Watch, which was created in different parts of Mauritius to promote the welfare of older persons in the

[10] See http://ijac.org.uk/images/frontImages/gallery/Vol_3_No_4/13.pdf.

respective regions and provide support to families in need of assistance and protection for older persons. One of its objectives is to prevent ... ts of abuse of older persons and to report cases of repeated abuse to an officer of the Unit. The Monitoring Committee for the Elderly supervises the operations of both the Unit and every Elderly Watch. It provides directions of a general character as well as adequate resources and facilities for their operation.

42. Complaints of elder abuse are reported to the Elderly Person's Protection Unit by either the various stakeholders' agencies or through one of the two hotlines. However, these cases only refer to elderly abuse in the domestic sphere. The provisions included in the Protection for Elderly Persons Act 2005 are quite restrictive and do not capture the full scale of the occurrence and detection of elderly abuse. The reliance on Elderly Watch networks and the work of officers posted at the Unit do not capture the full range of situations where the elderly can be abused, notably because no provision is made for the reporting of elderly abuse in institutional settings.

43. Older persons who own property are particularly prone to abuse by members of their family and relatives. Since November 2012, the Ministry of Social Security, National Solidarity and Reform Institutions has been operating a legal counselling programme on property rights for older persons.

44. The Independent Expert is particularly concerned about a number of reported criminal cases in which older persons have been victims of abuse, murder, theft and sexual violence and rape. She also pointed out that collective prejudice against older people and public awareness influence the way in which abuse and violence are perceived, recognized and reported.

C. Adequate standard of living, autonomy and participation

45. Mauritius has the lowest old age poverty rate in the region. While overall only an estimated 8.7 per cent of Mauritians live in poverty, there are pockets of poverty in some areas.[11] About 40 per cent of the population of Rodrigues, for instance, live below the poverty level. This includes older persons, who in addition regularly take charge of their grandchildren, as the children are usually seeking employment in Mauritius as a result of the very high unemployment rates (see A/HRC/19/63/Add.1). The high level of poverty among Mauritian Creoles has also led the Committee on Economic, Social and Cultural Rights to express its concerns, mentioning that poverty largely prevents the enjoyment of human rights of those affected.

46. Social transfers are crucial in Mauritius as they reduce the poverty rate significantly by between 20 and 40 per cent.[12] The most recent poverty analysis for 2006/07 undertaken by the Central Statistics Office indicates that the poverty rate of households with older persons would otherwise be 28.2 per cent.[13]

47. Housing is a critical element in the lives of older persons. The provision of adequate, affordable and barrier-free housing significantly affects the autonomy of older persons.

48. Social housing programmes in Mauritius date back to 1955. The National Housing Programme seeks to provide housing for the low, lower middle and middle-income groups through the construction and sale of housing units on State land. Allocation criteria are

[11] See www.ifad.org/operations/projects/regions/pf/factsheets/mauritius.pdf.

[12] See www.iese.ac.mz/lib/publication/III_Conf2012/IESE_IIIConf_Paper31.pdf.

[13] See http://statsmauritius.govmu.org/English/StatsbySubj/Documents/Poverty/Poverty%20Analysis%20report%20200607.pdf.

based on monthly income, while age or old age is not taken into consideration in decision-making.

49. The Independent Expert was informed that many neighbourhoods in Mauritius are de facto ethnically segregated, with low-status Creoles, including many from Rodrigues, living in the poorest housing, particularly in informal urban dwellings, which are spaces of vulnerability and exclusion. There is a need to ensure that social housing programmes do not reinforce such residential de facto segregation of poor and marginalized populations.

50. Rodrigues has a specific housing programme that supports the adaptation of housing for persons with reduced mobility, notably older persons and persons with disabilities.

51. Accessibility is an issue of concern in all areas of Mauritius, notably public services, transportation, communication and information. While older persons in Mauritius are entitled to travel freely on public transport, public buses are not accessible, which has a significant impact on the mobility of older persons. Moreover, in some poverty-stricken areas for instance, there were no facilities for public transport at all.[14]

52. Generally, there is a need for appropriate infrastructure for older persons in terms of accessible, affordable and barrier-free housing, user-friendly public transport and easy and safe access to public and private buildings.

53. Under the Civil Code of Mauritius, a legal guardian may be appointed for an older person who is unable to care for his or her own interests when suffering from a mental disability. In this regard the Independent Expert wishes to stress that substituted decision-making should be replaced by supported decision-making in the exercise of legal capacity, which is essential for the respect of the autonomy of older persons and individuals' right, in their own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose their place of residence.

54. Climate change is exacerbating the inherent environmental vulnerabilities of small island developing States like Mauritius. While it is not expected to create massive internal displacement in Mauritius, it could result in significant internal migration/relocation linked to the impact of climatic change on some economic sectors. In some places, moreover, populations will also need to be relocated for their own safety.

55. Experience shows that the effects of climate change have a disproportionate effect on older persons, owing to their reduced mobility, dependence and physical, emotional or mental condition. These factors are often aggravated by poverty and location, such as remote rural areas or coastal areas. Older persons tend to be excluded, isolated and left behind in natural disasters and emergencies.

56. The impact of climate change is already a reality in Mauritius and needs to be addressed and mitigated. If the effects cannot be mitigated, alternative livelihood or resettlement options need to be provided to populations that are affected, over time and gradually. Resettlement has started in some areas and experience shows that these processes were disparate and the same standards were not applied. It also demonstrated the need to

[14] Mauritius, Ministry of Social Security, National Solidarity and Reform Institutions, Observatory on Ageing, *Report on an exploratory study on the housing and living conditions of elderly persons from identified poverty-stricken areas* (March 2014), available from http://socialsecurity.govmu.org/English/Documents/Housing.pdf.

systematically inform the population, including older persons, about available resettlement options and to ensure that they are consulted throughout the process.[15]

D. Social protection and the right to social security

57. The Mauritian pension system includes several schemes that can be grouped into three categories: the Basic Retirement Pension, occupational compulsory pensions and voluntary pensions.

58. The Basic Retirement Pension is a non-contributory universal pension operating since 1976 and payable to all people of 60 years and older. In 2014, the average benefit was 5,416 rupias per month, i.e. around 140 euros.[16] The central Government finances expenditures through a grant to the National Pension Fund, which administers the programme.

59. With the Voluntary Retirement Scheme employees in the sugar industry can, moreover, opt for voluntary retirement. The benefits guaranteed to such employees are 300 m^2 of land and a cash compensation of two months' salary per year of service for male agricultural workers who are 55 years and above and female agricultural workers who are 50 years and above.

60. Pension expenditure in Mauritius continues to rise, reflecting rising dependency ratios resulting from an ageing society. Important steps were taken in 2013 to reform the pension system for civil servants by introducing a newly defined contribution system and increasing the retirement age for both women and men from 60 to 65 years. Key elements, such as the institutional set-up, distribution rules and an investment strategy are yet to be finalized and the new system will, however, only generate savings in around 30 to 35 years.[17] No reforms have yet been applied to the Basic Retirement Pension, where the eligibility age remains at 60 years.[18]

61. Older persons and persons with disabilities in need of constant care and attendance receive a care-giving allowance, in addition to other forms of social assistance, such as income support. The Basic Invalid Pension, which is allocated to persons with disabilities, is discontinued, however, after the age of 60. Older persons with disabilities thus only receive the old-age pension afforded to older persons in general. Considering that with age, requirements for all persons tend to increase, including disability-specific needs, the policy of revoking the Basic Invalid Pension, when the person with a disability becomes old, should be reconsidered.

62. According to regulation 3 of the Social Aid Regulations 1984, non-nationals are not entitled to social aid that is paid to poor households who do not have sufficient resources to meet their basic needs.

63. The Independent Expert indicates that the pension system has an important gender dimension, since it is younger women in households who are expected to care for the

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[15] International Organization for Migration, *The Other Migrants Preparing for Change—Environmental Changes and Migration in the Republic of Mauritius: An Assessment Report* (2011), available from http://publications.iom.int/bookstore/free/the_other_migrants.pdf.

[16] The median wage in 2012 was around 300 euros per month.

[17] International Monetary Fund, *Country Report No. 14/107: Mauritius* (May 2014), available from www.imf.org/external/pubs/ft/scr/2014/cr14107.pdf.

[18] International Monetary Fund, *IMF Working Paper — Pension Reforms in Mauritius: Fair and Fast — Balancing Social Protection and Fiscal Sustainability* (June 2015).

elderly and reach retirement age without having been active in the formal workforce, forcing them into poverty in later years.

64. While financial autonomy is key to ageing with dignity, according to a recent report by the Observatory of Ageing, 47 per cent of older persons care for other family members. About one fifth of them contribute towards the expenses of the family by using their pension money.[19] As older persons are an important income source through the universal pension, safeguards need to be put in place against their financial exploitation and other forms of abuse or maltreatment.

E. Education, training and lifelong learning

65. A number of continuous learning and training programmes, including on adult literacy and numeracy and on basic information and communications technology, are in place in Mauritius for older persons, to allow them to fully participate in social and community life.

66. A number of day-care centres — to be renamed activity facility centres — offer recreational and educational programmes for older persons throughout the country. The centres also provide computer and Internet facilities. Similarly, the Senior Citizens Council organizes a number of seminars and workshops around ageing issues, health care, nutrition and the protection of older persons as well as recreational and educational programmes. There are, moreover, several residential recreational centres in Mauritius.

67. In January 2014, Mauritius launched the first University of the Third Age, which offers a broad range of educational, sports and cultural activities. While it is important to take into account the specific needs of older persons in designing educational programmes, it is equally important to maintain a range of offers that do not exclusively target older persons, as this would be limitative and could lead to creating social spaces of exclusion. Educational offers which are open to younger adults as well as to older persons, foster intergenerational learning and intergenerational understanding.

F. Care

68. Health-care services are provided free of charge to the population in Mauritius. There are five health regions, each with a referral hospital and a network of health centres, which provide primary health-care services. There are also two district hospitals and four specialized hospitals.

69. The island of Rodrigues has a main hospital with some specialist services, capacities for intensive care are, however, limited (three beds) and more complex surgical cases need to be referred to the island of Mauritius. There are also two area health centres and 14 community health centres in Rodrigues. While access to primary health care in Rodrigues is in line with the standards set by the World Health Organization, i.e. within less than one hour's walk,[20] this may increase the dependence of older persons on assistance from family members and others.

[19] Mauritius, Ministry of Social Security, National Solidarity and Reform Institutions, Observatory of Ageing, *Summary Report of Thematic Areas Investigated* (April 2014), available from http://socialsecurity.govmu.org/English/Documents/Extended%20executive%20summary.pdf.

[20] See www.who.int/healthinfo/systems/WHO_MBHSS_2010_section4_web.pdf.

70. Besides the public health sector, private health care is also being developed in Mauritius. There are several private clinics with in-patient services that provide specialized treatment, such as renal dialysis and cardiac surgery. The number of beds available in the private sector represents over 15 per cent of the total number in Mauritius.

71. Care for older persons in Mauritius is still very much seen as the responsibility of families although this is becoming increasingly difficult as the society is undergoing radical changes. The Government also acknowledges that family carers require support and allocates a monthly allowance to persons providing care to an older person whose level of incapacity is at 60 per cent or more.

72. While medical home visits are available for the very old (90 years and older) and for those aged 75 and more who are bedridden, there is an urgent need for respite care to support families who provide care to older persons, particularly to those suffering from chronic illnesses. The Independent Expert was informed during her visit of the plans to establish a neighbourhood service that would provide older persons in need and those with severe disabilities with special support by trained carers, doctors, psychologists, physiotherapists and occupational therapists, and with social care.

73. Institutional care in Mauritius relies to a large extent on partnerships between the Government and non-governmental organizations, and on voluntary services, especially the collaboration of older persons themselves. As the number of public homes for older persons is grossly insufficient, private retirement homes meant for those who can afford them have gradually increased in recent years.

74. Older persons in need of social support are taken care of in one of 22 charitable institutions. These institutions receive weekly medical visits. Nursing and paramedical staff are also provided.

75. In addition, there is a centre for persons with severe disabilities including older persons (Foyer Trochetia). It is managed jointly by the Ministry of Social Security, National Solidarity and Reform Institutions and a non-governmental organization, and currently provides 24-hour nursing and care services, including physiotherapy, occupational therapy and rehabilitation for 32 older persons with severe disabilities. Once the older person is no longer bedridden and dependent, he or she is transferred to one of the charitable institutions. There is also a village for the elderly, Résidence Bois Savon, with 24 living units for older widows, who used to live alone and who receive a monthly rental allowance.

76. There are 25 health clubs for the elderly in different regions of the country. They are in general located in day-care centres and in some social welfare centres. A nursing officer provides services such as blood pressure checks or blood sugar testing on a weekly basis.

77. The Residential Care Homes Act 2003 was enacted to monitor the management of private homes for older persons and standardize the norms governing them. The purpose of the Act is to apply general supervision and control over residential care homes, to supervise compliance with licences, to set up codes of practice for residential care homes and to monitor conformity with the codes. Licensing of residential care homes is regulated in more detail by the Residential Care Homes Regulations 2005. A total of 27 private care homes have registered under the Act.

78. The Residential Care Homes Act 2003 also stipulates that there should be at least two inspections per year (one announced and one unannounced) to ensure that the residents in the homes receive appropriate care. Regular visits to charitable institutions are, moreover, conducted by officers of the Ministry of Social Security, National Solidarity and Reform Institutions to ensure that the residents receive adequate care.

79. Nevertheless, quality of care remains an area of concern in all settings. It is reported that some of the homes are overcrowded and lack appropriate facilities and that food is inadequate and not adapted to the individual needs of older persons. A large number of private care homes seem, moreover, to operate illegally, i.e. without registration, and thus elude any monitoring or quality control that is stipulated.

80. Informal carers are often not adequately trained and not well prepared for the tasks of a caregiver. Efforts have been made to provide practical training to informal carers, taking into account the specific needs of dependent older persons, but this remains limited to a 15-hour course. In 2013, 450 informal carers were trained and training was also provided to 200 formal carers. Since these are low-paid jobs, they do not, however, attract or retain carers who have had training.

81. While many older persons in institutional care suffer from dementia, including Alzheimer's disease in Mauritius, these diseases are still unknown to many health and other professionals and also to the public at large. According to a recent study carried out by the Observatory of Ageing, around 12 per cent of the persons in subsidized homes for older persons suffer from dementia. The actual figures are estimated to be much higher since the disease is often not diagnosed in its early stages.[21] These numbers are forecast to double by 2030, given the intensity of ageing in Mauritian society. Although no treatment is currently available for dementia, there is much that can be done to improve the lives of people with dementia and their caregivers and families.

82. One specialized association[22] operates a day-care centre that provides services to persons with dementia and their families, including cognitive stimulation, music therapy and reminiscence. The Independent Expert was informed during her visit that there was a proposal to provide day-care facilities and support for persons with dementia throughout Mauritius, in collaboration with the Alzheimer Association of Mauritius and the existing day-care centres. The Independent Expert welcomes this proposal as there is indeed a need to provide specific activities for older persons suffering from dementia with a view to slowing down the progression of the disease and improving their quality of life.

83. Older persons have different patterns of disease presentation than younger adults. They respond to treatment and therapies in different ways and frequently have complex social needs relating to their chronic medical conditions. While there are some specialized geriatric sessions provided by health points, it is important to ensure that sufficient numbers of qualified geriatrics health professionals are available to ensure that older persons can fully enjoy their right to health.

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[21] Mauritius, Ministry of Social Security, National Solidarity and Reform Institutions, Observatory on Ageing, *Thematic Area Health: Management of Dementia and Alzheimer's Disease in Subsidized Care Homes* (January 2014), available from http://socialsecurity.govmu.org/English/Documents/Health.pdf.

[22] The Alzheimer Association of Mauritius is a non-governmental organization that looks after people with dementia and Alzheimer's disease. Its main objectives are informing and educating the public, raising awareness, providing support to patients and their families, running a day-care centre, training health professionals and participating in research work.

V. Conclusions and recommendations

A. Overall remarks

84. The Independent Expert acknowledges and commends the tremendous efforts undertaken by the Government of Mauritius in ensuring that older persons fully enjoy their human rights. She recognizes the normative action by the Government and refers to the rather remarkable legal, institutional and policy framework to safeguard the rights of older persons.

85. The allocation of about 50 per cent of its budget to social services, including free health services and education that also benefit older persons, is a considerable investment — not only of a financial nature — for a developing country in its people and society. In addition, the country's non-contributory universal pension for all persons of 60 years and older, which has been operating since 1976, has to be highlighted, as financial autonomy is key to ageing with dignity.

86. In spite of the efforts that have been made, the Independent Expert indicates that the Government is facing important challenges when it comes to implementing and enforcing its obligations and commitments that are geared towards having a sustained impact on the lives of older persons.

87. Awareness of the challenges ahead in the realization of all human rights by older persons and removal of general attitudinal barriers are prerequisites to facilitate solutions that would foster implementation. Weak inter-institutional coordination, a lack of policy coherence and ineffective multisectoral approaches do not contribute to increasing and improving implementation of laws and policies. The community approach that underpins policymaking rather than a differentiated approach, placing the individual at the centre of attention, is another element that contributes to impeding implementation and the adoption of a human rights-based approach to older persons. The Independent Expert highlights in this regard the Government's clear commitment to addressing the challenges faced, which also requires a shift from a fragmented approach towards a comprehensive, human rights-based, national strategy for the realization of all human rights by older persons. She further stresses that the rights of older persons should be mainstreamed into the policies of all ministries and all stakeholders at all levels of government.

88. The 2001 National Policy on the Elderly was an important step to comprehensively address the welfare dimension of the ageing phenomenon. The Independent Expert indicates that consultations on the National Policy on Ageing (2014–2024) were completed in March 2014 and she calls upon the Government to deploy all the efforts necessary to implement the new policy.

89. The Independent Expert welcomes the National Human Rights Action Plan 2012–2020 and commends the Government for having paid special attention to older persons. She encourages the Government to take further measures, beyond those identified in the Plan, to ensure the full enjoyment of all human rights by older persons. The plans to establish a new elderly welfare department at the Ministry of Social Security, National Solidarity and Reform Institutions and an Ombudsperson for the elderly have also been noted.

90. The Independent Expert urges Mauritius to withdraw the important reservations it has made to core articles of the Convention on the Rights of Persons with Disabilities, i.e. on article 9, on accessibility, article 11, on situations of risk and

humanitarian emergencies, and article 24, on education, as they are not permissible and impede the full application of the rights under the Convention.

91. The Independent Expert encourages Mauritius to ratify all human rights treaties to which it is not yet party, notably the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, as well as all International Labour Organization conventions, in particular the Nursing Personnel Convention, 1977 (No. 149).

92. The Independent Expert reiterates the concerns expressed by the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Elimination of Racial Discrimination in relation to the domestication of the respective conventions into national legislation, and stresses that the domestication of human rights treaties to which Mauritius is party should be pursued as a matter of priority so that individuals can invoke them before national courts.

93. On the basis of these conclusions and the observations in the present report, the Independent Expert makes the recommendations set out below.

B. Recommendations to the Government

1. Awareness-raising and training

94. The Independent Expert reiterates the importance of raising awareness and changing people's attitudes and beliefs towards older persons at all levels of society, in accordance with the Government's acknowledgement of the role played by older persons in nation-building and the emphasis on intergenerational dialogue, which are good examples in the context of the challenges faced by multilingual, multicultural and multi-ethnic societies. International human rights law, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and other relevant instruments; principles and standards, such as the United Nations Principles for Older Persons and general comment No. 6 (1995) of the Committee on Economic, Social, and Cultural Rights, should be popularized and made publicly available. Relevant domestic legislation has also to be popularized, such as the Protection of Elderly Persons Act 2005 and the Legal Aid (Amendment) Act 2012 in conjunction with a nationwide awareness-raising campaign to educate older persons, in particular those who are marginalized, about their rights and the remedies available to enable them to pursue legal action and exercise these rights.

95. It is essential to devise an awareness-raising strategy regarding the issue of abuse of and violence against older persons. Awareness-raising campaigns need not only target older persons themselves, but also the social environment of older persons, such as family, friends and caregivers, as well as employees in homes and institutions, doctors, nurses, carers and the broader community. Awareness-raising efforts should be complemented by mandatory, specialized training seminars for judges, lawyers and other members of the judiciary as well as for representatives of local authorities, the police, the media and non-governmental organizations, including in the handling of cases of violence against older persons in various settings.

2. Study and statistics

96. The Independent Expert welcomes the recent establishment of the Observatory on Ageing in order to analyse the current situation of older persons, identify trends and challenges and to ensure a better understanding of the implications of an ageing population as an essential foundation for policy development.

97. She encourages the Government to ensure nationwide, systematic and regular collection of disaggregated data on impediments to the enjoyment of all human rights by older persons, for example, on all forms of discrimination on the basis of age as a sole or accumulated criterion, on exclusion as well as on all forms of abuse and maltreatment. A thorough evidence-based study on the current and future needs of, inter alia, various forms of care or affordable, accessible and barrier-free housing is a precondition to meet immediate needs, to plan and prepare for the future and develop appropriate measures to ensure an inclusive society for all ages. She also stresses the need to ensure that the voices of older persons, including the very old and those living in homes, are systematically included in surveys, for a better understanding of their needs and to reflect the enormous heterogeneity of older persons.

98. Studies, surveys and statistics should focus on groups of older persons who are marginalized on multiple grounds such as gender, disability/impairment, or for any other reason created by history, tradition or custom. A cross-national data collection system should be established to allow for a more systematic evaluation of measures and interventions and their effectiveness. The data should be used to take the measures necessary, and to build up the capacity to fully realize the rights of older persons. Given that the data have to be used sensibly to avoid stigmatization and potential misuse, particular care should be exercised when collecting and analysing data in order to respect and enforce data protection and privacy.

3. Discrimination

99. The Independent Expert emphasizes the need for an anti-discrimination strategy addressing discrimination in a coherent and multifaceted way. She recommends that the Government continue to address the general patterns of discrimination that are prevalent in the country, perpetuated in old age and particularly affect certain communities and ethnic groups, such as the Creoles who continue to experience disadvantages in the enjoyment of economic, social and cultural rights. She also emphasizes the importance of giving proper status to the languages spoken by older persons so that language becomes the thirteenth protected ground under the Equal Opportunities Act. Furthermore, this is essential to eliminate language barriers to equality and to the enjoyment of all sets of rights.

100. While the caste system is not recognized by law, hierarchical structures along caste and racial lines still persist. The Independent Expert stresses the importance of raising awareness of equality and changing people's attitudes and beliefs to eliminate negative prejudices regarding certain groups. The Independent Expert encourages the Government to take affirmative action in favour of all marginalized groups including on the basis of age to redress the existing imbalances.

4. Violence and abuse

101. The Independent Expert recognizes that the Government has taken a number of legislative measures and established an institutional framework in recent years, but indicates that these remain limited in scope and do not adequately address the issue of violence and abuse against older persons in Mauritius which continues to remain a matter of serious concern. There is a need to legislate or amend existing legislation to

protect older persons from abuse and to adopt policies to prevent violence and abuse. She welcomes in this regard the announcement made by the President of Mauritius that new legislation will be brought forward to provide more protection and security, notably to older persons, and to substantially increase the penalties for offenders.[23]

102. The Protection of Elderly Persons Act 2005 was a crucial step towards providing adequate protection to older persons against ill-treatment and abuse, be it physical, verbal or emotional harassment, or financial prejudice, as well as to breaking the taboo of elder abuse in the country. The provisions included in the Act, however, do not capture the full range of occurrences of violence against older persons and therefore do not allow proper detection of such violations.

103. Training of judges, lawyers and prosecutors is essential to ensure that investigation of cases of domestic violence proceeds to signal to the community that violence and abuse against older persons are serious crimes and will be treated as such.

104. The continued prevalence of elder abuse indicates that normative action is not enough and that further measures and mechanisms are required to detect, report and prevent all forms of abuse of older persons in institutional care and in family settings. Protocols and processes are needed to assist individuals, families, carers in institutional settings and community groups to understand the issues surrounding elder abuse, to recognize individuals who are at risk and to respond when appropriate. Caregivers in domestic and institutional settings need to be further sensitized and trained on how to prevent and detect elder abuse.

105. Women are more prone to become victims and therefore a gender perspective should be incorporated in the sensitization and detection of elderly abuse.

106. As older persons are an important income source through the universal pension, safeguards need to be put in place against their financial exploitation and other forms of abuse or maltreatment.

107. The reliance on Elderly Watch networks and the work of officers within the Welfare and Elderly Protection Unit do not capture the full range of situations in which older persons can be abused. For example, no provision is made for the reporting of elderly abuse in institutional settings. The Independent Expert therefore recommends that the legislation be amended to cater for elder abuse in both domestic and institutional settings, and calls upon the Government to make the zero tolerance policy against crime and violence a reality for older persons.

108. The Independent Expert wishes to underline that older persons are not a homogeneous group and should not be treated as such. A differentiated and targeted approach needs to be devised to address the needs of the different categories of older persons.

109. In view of a general tendency for underreporting cases of violence and abuse involving older persons, the Independent Expert points out that dissemination of information to older persons about their rights could help to further improve disclosure about abusive experiences.

[23] Address by the President of Mauritius, *Government Programme 2015–2019: Achieving Meaningful Change* (27 January 2015).

5. Adequate standard of living, autonomy and participation

110. The Independent Expert recognizes the comparatively low poverty rate in Mauritius. She indicates, however, that pockets of poverty do exist in some areas and that further measures need to be taken to reduce poverty among older persons, including older women. She encourages the Government to pay particular attention to the situation of older persons on the island of Rodrigues and in particular to take effective measures to combat poverty in old age, to ensure that older persons have access to affordable barrier-free housing and appropriate health-care services and care to ensure the full enjoyment of their human rights.

111. The Independent Expert points out that there is a need for affordable, accessible and barrier-free housing for older persons in order to reduce their levels of dependency and provide alternative housing options. She welcomes the Government's plans to increase the housing supply and homeownership for the economically disadvantaged, including through the construction of 10,000 social housing units. She encourages the Government to ensure that these units take into account the needs of older persons, particularly in terms of accessibility. She also calls on the Government to include old age among the allocation criteria for social housing and to ensure that social housing programmes do not reinforce de facto residential racial segregation.

112. While recognizing that the Building Control Act 2012 addresses issues of physical accessibility to buildings, the Independent Expert calls on the Government to implement the relevant legislation in its entirety, taking into account up-to-date technical standards and specifications and to ensure that non-compliance is appropriately sanctioned. There is furthermore a need to adapt existing public buildings to the needs of older persons and to eliminate existing barriers. Further steps are needed to improve roads and pavements in this regard and to make public transport accessible.

113. Engineers' and architects' awareness of the implications of their profession on the enjoyment of all human rights by older persons is essential. The Independent Expert recommends fostering the application of a human rights-based approach to secure the involvement of architects and engineers in the design of public and private buildings, in conformity with human rights.

114. The Independent Expert indicates that the impact of climate change and the implementation of adaptation and mitigation policies are challenges that the Government needs to continue addressing. There is a need for an in-depth analysis and mapping of persons in vulnerable situations, especially older persons. During emergency situations, humanitarian response, service, support and information must be adapted to the specific needs and conditions of older persons. Planned relocation requires national legal frameworks to protect the rights of older persons who are affected, and should be accompanied by well-designed institutional arrangements that set forth the respective roles and responsibilities of central and local government drawing upon existing standards, guidelines and best practices, such as the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, the Peninsula Principles for Climate Displacement within States as well as the Guiding Principles on Internal Displacement (see E/CN.4/1998/53/Add.2). It is essential to foster the resilience of older persons, reduce their vulnerability and ensure that older persons are fully informed, for example by making flood maps publicly available, and that they participate actively in the formulation and implementation of policies and decisions that directly affect them. Their experience, knowledge and skills should be part of all phases of the disaster risk reduction strategy, from mapping exercises to implementing solutions at the local

level. This would empower local communities to develop practical and realistic approaches to the environmental challenges faced.

6. Social protection and the right to social security

115. The Independent Expert indicates that the pension and social protection systems are fundamental to the well-being of older persons. She expresses concern, however, regarding the long-term sustainability of these systems and encourages the Government to take further measures to reduce the fiscal cost of them, such as decreasing incentives for early retirement and reducing job categories eligible for early retirement. She also refers to the recommendation made by the International Monetary Fund to convert the universal basic retirement programme into a true poverty pension to improve social protection and generate fiscal savings.

7. Education, training and lifelong learning

116. In view of the intensity of ageing, further measures are required to promote active ageing and lifelong learning.

117. The Independent Expert stresses that promotion of lifelong learning is essential for older persons to be able to deal with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age. While acknowledging the existence of a wide range of educational and cultural programmes available for older persons, including in recreational and day-care centres, in the light of the intensity of ageing further measures are required to promote lifelong as well as intergenerational learning.

8. Care

118. The Independent Expert emphasizes that, taking into account their particular vulnerability, specific attention has to be paid to older persons in need of care, both in institutions and at home, and that there should be adequate numbers of skilled staff, appropriate training, quality assurance and monitoring.

119. Family carers require comprehensive assistance, including community support and professional assistance, such as counselling and advice, therapeutic day care and respite care services.

120. The Independent Expert indicates that the Residential Care Homes Act 2003 has been an important step towards regulating institutional care. Yet, while all care homes need to be registered with the Residential Care Homes Board, and even though the operator may face heavy fines and even imprisonment in case of non-compliance, there are a significant number of care homes operating illegally in Mauritius that evade monitoring and quality control.

121. The Independent Expert encourages the Government to review the system of inspection with a view to improving accountability through adequately trained inspectors and to establish a dedicated registration and inspection unit, answerable to the Residential Care Homes Board.

122. It is essential that geriatric medicine be recognized as a medical subspeciality and be integrated into university curricula to ensure that sufficient qualified specialists in geriatrics are available to meet the needs of an ageing society. Training in gerontology and geriatrics should also be provided to different categories of health personnel and community members. Moreover, geriatric wards should be established in all hospitals to ensure comprehensive, compassionate care that recognizes the

special needs of older persons with a view to optimizing their quality of life and functional ability.

123. The Independent Expert calls on the Government to extend the availability of palliative care beyond cancer and to ensure availability and accessibility of such care for all older persons in need, particularly those who suffer from a life-threatening or life-limiting illness to ensure their well-being and allow them a life with dignity.

124. The Independent Expert welcomes the announcement by the Government of its intention to set up dedicated counters at the level of primary health-care centres and hospitals to cater for the needs of older persons and persons with disabilities. She also welcomes the strategy enshrined in the National Human Rights Action Plan that seeks to create a pool of 3,000 carers for older persons and to provide basic training on home-based care. Training for informal carers should include training in caring as well as in protecting the carer's own physical and mental health. The Independent Expert calls on the Government to implement this strategy as a matter of priority.

125. The Independent Expert strongly encourages the Government to make dementia a public health priority and to develop a national plan of action for dementia with the collaboration of all stakeholders, taking into account the findings of the Observatory of Ageing regarding subsidized homes, private care homes, and the population at large's knowledge, attitude and care of dementia and Alzheimer's disease. There is a need, inter alia, to integrate dementia services at the primary health-care level, to further build the capacities of doctors, not only to diagnose and treat dementia, but also with regard to psychosocial interventions for dementia and provide training in dementia care. Activities in care homes also need to be improved and standardized to cater for the specific needs of persons suffering from dementia.

C. Recommendations to the international community

126. The international community has an important role to play in assisting and cooperating with the Government to fully implement the existing international instruments with regard to older persons, in tandem with non-governmental organizations and all civil society actors. A status determination of the challenges faced by Mauritius in ensuring the full enjoyment of all human rights by older persons could assist in identifying and evaluating good practices as well as gaps in the implementation of existing legislation. Increasing exchanges, awareness and active engagement contribute to enhancing mainstreaming of a human rights-based approach in government programmes.

127. The Independent Expert moreover recommends that the United Nations country team, in cooperation with the regional office of the Office of the United Nations High Commissioner for Human Rights, identify a common human rights focal point to assist in matters relating to the realization of all human rights by older persons to work in cooperation with international organizations, relevant regional human rights mechanisms, United Nations agencies, non-governmental organizations, civil society organizations, national institutions and academia to follow up and foster the implementation of measures contributing to the promotion and protection of the human rights of older persons.

D. Recommendations for businesses

128. The Independent Expert is concerned about direct and indirect discrimination against older persons, especially concerning old age in conjunction with other

characteristics, be they gender, impairment, African descent, belonging to an ethnic, religious or linguistic minority or any other distinction. The Independent Expert therefore wishes to remind businesses of their obligations to adhere to international standards preventing, inter alia, all forms of discrimination and to the Guiding Principles on Business and Human Rights,[24] which provide guidance on responsible contracting and State-investor contract negotiations. The Independent Expert also wishes to remind the Government of its primary obligation to respect, protect and fulfil human rights in the context of corporate activities undertaken by State-owned or private enterprises, and the need to adopt appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations.

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[24] See the statement made by the Committee on Economic, Social and Cultural Rights on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, sect. A).

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte

Addendum

Mission to Mauritius: comments by the State on the report of the Independent Expert*

* Reproduced in the annex as received.

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Please recycle

Comments on the Report of the Independent Expert on the enjoyment of all human rights by older persons, Rosa Kornfeld-Matte, on her mission to Mauritius (from 28 April to 8 May 2015)

1. General Observations on Mauritius

It has been observed that the Report contains several inconsistencies which pertain to the social fabric of the Mauritian society and which should be avoided in view of their sensitive connotations. Parts concerned are:

Paras 5, 8 & 11: data pertaining to Rodrigues Island has been addressed separately.

We should insist that Rodrigues is an integral part of the Republic of Mauritius and statistics or information relevant to the island should be within the national framework.

Para 7: Bhojpuri has not been included as one of the spoken language in Mauritius.

We would advise that same should be included.

Para 20: it is mentioned in this paragraph that the chairperson of the National Human Rights Committee is the SCE of the PMO.

It is proposed that SCE be replaced by Accounting Officer, Home Affairs Division.

Para 33: wherein it is mentioned that there are concerns related to discrimination between Mauritians and Rodriguans.

This sentence is considered to be factually wrong and should be deleted. The budget allocation to Rodrigues is an illustration of the positive discrimination in favour of Rodrigues.

Para 33: in this paragraph mention is also made that the creoles are significantly disadvantaged in the enjoyment of their economic, social and cultural rights.

This part is also not factually correct given that the policies and measures taken by Government are to uplift the standard of living of the population as a whole, without any discrimination towards any particular ethnic group.

Para 70: in this paragraph it is mentioned that "... private health care has started developing in Mauritius..".

This statement is factually not correct as there already exists a well-established private health care system in Mauritius.

2. Our observations pertaining to Older Persons in the Report

Paragraph 13 Quoted

The country also ratified the Convention on the Rights of Persons with Disabilities but made important reservations to core articles, i.e. on article 9 on accessibility, article 11 on situations of risk and humanitarian emergencies and article 24 on education, which the Independent Expert urges the Government to withdraw as it impedes the full application of rights under the Convention. The Independent Expert welcomed the intention expressed by the Government during the 2013 Universal Periodic Review of Mauritius to withdraw some of the reservation and regretted that no further steps had been taken in this regard.

Reply to Paragraph 13

Reservations to core Articles of the Convention on the Rights of Persons with Disabilities:

- On article 11, the enactment of the Disaster Management Bill is awaited.
- On article 9.2(b), the promulgation of the new accessibility regulations is awaited.
- On article 24.2 (b), The Ministry of Education and Human Resources, Tertiary Education and Scientific Research has proposed an inter-ministerial committee to discuss about the withdrawal of this reservation.

Paragraph 18 and 19 quoted

Mauritius was the first country in Africa, which in 2001 adopted a National Policy on Elderly. Following the adoption of the Madrid International Plan of Action on Ageing in 2002, the national policy was revised in 2008 and its focus shifted from the welfare dimension of ageing to a developmental approach and the concept Active Ageing. Consultations on a new National Policy on Ageing (2014-2024) were completed in May 2014 and it is hoped that adequate measures will be taken to publicize and implement the new policy. Rodrigues subscribes to the National Policy and, in addition, has a number of tailored programmes for older persons and persons with disabilities.

To oversee the effective implementation of the national policy, a Committee of Officials was established under the aegis of the Ministry of Social Security, National Solidarity and Reform Institutions.

Reply: to merge Paragraph 18 and 19 as hereunder

Mauritius was the first country in Africa, which in 2001 adopted a National Policy on Elderly. Following the adoption of the Madrid International Plan of Action on Ageing in 2002, the National Policy was revised in 2008 and its focus shifted from the welfare dimension of ageing to a developmental approach and the concept active ageing.

To oversee the effective implementation of the national policy, a committee of officials was established under the aegis of the Ministry of Social Security, National Solidarity and Senior Citizen Welfare and Reform Institutions.

Consultations on a new National Policy on Ageing (2014-2024) were completed in May 2014. However the Ministry has subsequently opted for a 5-year Strategy Plan covering period 2015-2020 and is presently finalizing same.

Rodrigues subscribes to the National Policy and the subsequent 5-year Strategy Plan, in addition, has a number of tailored programmes for older persons and persons with disabilities.

Paragraph 23 quoted

The Ministry is also in charge of the Elder-Care Department, which is mainly responsible for medical, paramedical and medico-social services and health education. The Independent Expert was pleased to learn that the Minister announced the setting up of a new elderly welfare department at the Ministry and an Ombudsperson for the elderly.

Reply: to remove this sentence

"The independent expert was pleased to learn that the Minister announced the setting up of a new elderly welfare department at the Ministry and an Ombudsman for the elderly"

Paragraph 33 quoted

The Independent Expert noted that the situation of older persons could not be seen in isolation, but that it was reflective of existing patterns of discrimination, marginalization and social exclusion that needed to be addressed. Certain communities and ethnic groups such as the Creoles for instance, remain significantly disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the implementation of a range of measures benefitting the most disadvantaged segments of the population. Without a change in attitudes, the patterns of violations are perpetuated and sometimes exacerbated in the old age. There are also concerns related to discrimination between Mauritians and Rodriguans.

Reply: to remove Paragraph 33 and replace by:

Every senior citizen has the same right and benefits from all schemes of social protection. The services of the Ministry are accessible to everybody through a system of decentralization as there are forty-four regional Social Security Offices scattered all over the islands of Mauritius and Rodrigues. It is an ongoing exercise to sensitize our beneficiaries of all schemes existing at the Ministry through personal contacts and media.

There is no discrimination between Mauritians and Rodriguans. In fact there exists a positive discrimination towards Rodriguans in the sense that many of the consumer goods are subsidized in Rodrigues.

Paragraph 34 quoted

Creole is the common language spoken by all groups in Mauritius, notably the older generation, but it does not have any official status and cannot be used in the administration. Particularly language can be a vehicle for social exclusion and impede older persons from accessing and enjoying their rights. It is therefore essential to ensure that proper status is given to the languages spoken by the older persons so that language becomes the thirteenth protected ground under the Equal Opportunities Act. It is also essential to eliminate language barriers to equality and to the enjoyment of civil and political rights as well as economic, social and cultural rights.

Reply: To add

"In practice opportunity to speak creole is given to all those who cannot use French or English to communicate".

Paragraph 37 quoted

Besides the adoption of the Protection of Elderly Persons Act, the Government has taken a number of legislative measures and has established an institutional framework in recent years, but these remained limited in scope and did not adequately address the issue of violence against older persons and elder abuse in Mauritius which continues to remain a matter of serious concern. Neither the National Policy on Ageing 2008 nor the Residential Care Homes Act of 2003 address the issue in the community and residential care homes respectively.

Reply:

Number of cases dealt with has been decreasing over the years; example in 2006 the average was 1200 cases and in 2014 the average is 750 cases.

Paragraph 39 quoted

The Protection of Elderly Persons Act, which became effective as on 1 September 2006, was enacted to ensure that adequate protection is provided to older persons against abuse, be it physical or verbal ill-treatment, mental or emotional harassment, financial loss or material prejudice. The Act makes an offence any act of abuse on an older persons or the willfully failing to provide an older person under his care with adequate food, medical attention, shelter or clothing. The Court may grant a protection order if there is reason to believe that an older person has suffered, is suffering or is likely to suffer an act of abuse. The protection order seeks to restrain the person committing the act of abuse from engaging into any such conduct towards the older person.

Reply: to add

"The Ministry is working on the amendment of The Protection of Elderly Persons Act 2005 to provide more protection to the elderly".

Paragraph 45 quoted

Mauritius has the lowest old age poverty rate in the region. While overall an estimated 8.7 per cent of Mauritians live in poverty, pockets of poverty exist in some areas. About 40 per cent of the population of Rodrigues, for instance, lives below the poverty level. This includes older persons, who in addition regularly take charge of their grandchildren, as the children are seeking employment in Mauritius as a result of the very high unemployment rates. The high level of poverty among Mauritian Creoles has also led the Committee on Economic, Social and Cultural Rights to express its concerns, noting that it largely prevents the enjoyment of human rights by those affected.

Reply: We are not agreeable on this sentence :

"The high level of poverty among Mauritian Creoles has also led the committee on Economic, Social and Cultural Rights to express its concerns, noting that it largely prevents the enjoyment of Human Rights by those affected"

Paragraph 49 quoted

The Independent Expert was informed that many neighborhoods in Mauritius are de facto ethnically segregated, with low-status Creoles, including many Rodrigues, living in the poorest housing, particularly in informal urban dwellings, which are spaces of vulnerability and exclusion. There is a need to ensure that social housing programmes do not reinforce such residential de facto segregation of the poor and marginalized populations.

Reply:

The paragraph is factually incorrect.

Paragraph 51 quoted

Accessibility is an issue of concern in all areas in Mauritius, notably public services, transportation, communication and information. While older persons in Mauritius are entitled to travel freely on public transport, public buses are not accessible, significantly impacting the mobility of older persons. Moreover, in some poverty-stricken areas for instance, there are no facilities for public transport at all.

Reply: the following sentence is not correct and should be deleted

"Moreover, in some poverty-stricken areas for instance, there are no facilities for public transport at all"

Paragraph 55 quoted

Experience shows that the effects of climate change have a disproportionate effect on older persons, due to their mobility, dependence, physical, emotional or mental condition. These factors are often aggravated by poverty and location, such as remote rural areas or coastal areas. Older persons tend to be excluded, isolated and left behind in natural disasters and emergencies.

Reply: To rephrase last sentence as follows

The National Disasters Risk Management Committee (NDRMC) recommended older persons who are inmates of Homes that they are safely transferred to a safe place in case of threats due to Natural Disasters or floods. A plan of evacuation by the Managers of all Homes is presently being worked out.

Older persons living with members of their family are taken care of by these members in case of emergencies.

As regards old persons who live alone, they can seek shelter in the emergency centres which are operated in case of emergencies. In case assistance is needed for them to attend the shelters, the Police usually helps.

Paragraph 57 quoted

The Mauritian pension system includes several schemes that can be grouped into three main categories:- Basic Retirement Pensions (BRP), Occupational compulsory pensions and voluntary pensions.

Reply: Whole paragraph to rephrase as follows

The Mauritian Pension System includes several schemes that can be grouped into three main categories: Social Assistance, Social Insurance and Private or Occupational Pension Schemes.

Paragraph 58 quoted

The Basic Retirement Pension is a non-contributory universal pension operating since 1976 and payable to all people 60 years and older. In 2014, the average benefit was Rs 5416 per month, i.e around 140 €. The central government finances expenditures through a grant to the National Pension Fund (NPF), which administers the programme.

Reply: to rephrase this sentence – "In 2014, the average benefit was Rs 5416 per month, i.e around 140€" as follows:

The Basic Retirement Pension is a noncontributory Universal Pension operating since 1976 and payable to all people 60 years and older. As from December 2014, the benefit increased from Rs 3,623 to Rs 5000 per month.

Paragraph 61 quoted

In addition, older persons and persons with disabilities in need of constant care and attendance receive a care giving allowance, in addition to other forms of social assistance, such as income support. The Basic Invalid Pension, which is allocated to persons with disabilities, is however discontinued after the age of 60. Older persons with disabilities thus only receive the old-age pension afforded to older persons in general. Considering that with age, requirements for all persons tend to increase, including disability-specific needs, the policy of revoking the basic invalid pension when the person with a disability becomes old, should be reconsidered.

Reply: to amend last sentence as follows:

The Basic Invalid Pension, which is allocated to persons with disabilities, is however discontinued after the age of 60 and replaced by Basic Retirement Pension (BRP) – After the age of 60 if the elderly needs constant care and attention, he receives a Carer's Allowance. Older persons with severe disabilities benefit from an enhanced Basic Retirement Pension as follows: Rs 5,000 + Rs 3,000 = Rs 8,000.

Paragraph 73 quoted

Institutional care in Mauritius relies to a large extend on partnerships between the government and NGOs, relying to a large extend on voluntary services, especially the collaboration of older persons themselves. As the number of public homes for older persons is grossly insufficient, private retirement homes meant for those who can afford them, have gradually increased in recent years

Reply:

In Mauritius, there are no public homes. There are only Private Homes. Those private homes subsidized by the Ministry of Social Security, National Solidarity and Reform Institutions are termed Charitable Institutions. Both the Charitable Institutions and Private Homes are regulated under the Residential Care Homes Act.

Paragraph 77 quoted

The Residential Care Homes Act has been enacted in 2003 to monitor the management of private homes for older persons and standardizing the norms governing them. This Act is to apply general supervision and control over residential care homes, to supervise compliance by licenses, to set up codes of practices for residential care homes and to monitor conformity with the code. Licensing of residential care homes is regulated in more detail by the Residential Care Homes Regulations 2005. Twenty-seven private care homes have registered under the Act.

Reply: To amend last line to read as follows:

Thirty-one private residential care homes are registered under the Act.

Paragraph 79 quoted

Nevertheless, quality of care remains an area of concern in all settings. It is reported that some of the homes are overcrowded, lack appropriate facilities, and that food is inadequate and not adapted to the individual needs of older persons. A large number of private care homes moreover seem to operate illegally, i.e. without registration, and thus elude any stipulated monitoring or quality control.

Reply:

A few private residential care homes operate illegally in Mauritius. However, the Ministry is not aware of their addresses. Those known by the Ministry, action is taken for them to get registered. The help of stakeholders are sought to locate the illegally operating residential care homes.

Paragraph 80 quoted

Informal carers are often not adequately trained and are not well prepared for the tasks of a caregiver. Efforts have been made to provide practical training to informal carers, taking into account the specific needs of dependent older persons, but remain limited to a 15-hour course. In 2013, 450 informal carers have been trained and training has also been provided to 200 formal carers. However, since these are low paid jobs, they do not attract or retain carers who have had training.

Reply:

"In 2013, 450 Informal Carers have been trained" – As at June 2015, there are 1443 Informal Carers who have been trained.

Paragraph 88 quoted

The 2001 national policy on the elderly was an important step to comprehensively address the welfare dimension of the ageing phenomenon. The Independent Expert notes that consultations on the National Policy on Ageing (2014-2024) were completed in March 2014 and calls upon the Government to deploy all necessary efforts to implement the new national policy.

Reply:

Presently the Ministry is working on a 5-year Strategy Plan covering period 2015-2020.

Paragraph 99 quoted

The Independent Expert emphasizes the need for an anti-discrimination strategy addressing discrimination in a coherent and multi-faceted way. She recommends that the Government continue to address the general patterns of discrimination that are prevalent in the country and that are perpetuated in old age and particularly affect certain communities and ethnic groups, such as the Creoles who continue to experience disadvantages in the enjoyment of economic, social and cultural rights. She also emphasizes the importance to give proper status to languages spoken by older persons so that language becomes the thirteenth protected ground under the Equal Opportunities Act. This is also essential to eliminate language barriers to equality and to the enjoyment of all sets of rights.

Comments - In practice opportunity to speak creole is given to all those who cannot use French or English to communicate.